

WEDNESDAY, APRIL 19, 1995

THIRTY-FIFTH LEGISLATIVE DAY

The House met at 2:00 p.m. and was called to order by Mr. Speaker Naifeh.

The proceedings were opened with prayer by the Reverend Clayton Hall, Hall Town Baptist Church, Portland, Tennessee.

Representative McDonald led the House in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 95

Representatives present were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Mr. Speaker Naifeh -- 95.

EXCUSED

The Speaker announced that the following member(s) has/have been excused, pursuant to request(s) under **Rule No. 20**:

Representative Rigbsby; business reasons.

PRESENT IN CHAMBER

Representative(s) Jackson was/were recorded as being present in the Chamber.

PERSONAL ORDERS

RECOGNITION

Rep. Phillips and Senator Womack were recognized in the Well to introduce the 1994-1995 Shelbyville Central High School Girl's Basketball Team, TSSAA State Tournament Champions. The Clerk read House Joint Resolution No. 230.

SPONSORS ADDED

Under Rule No. 43, the following members were permitted to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Joint Resolution No. 233: Rep(s). Fowlkes and White as prime sponsor(s).

House Bill No. 1: Rep(s). Givens, Cole (Dyer), Lewis, Williams (Union), Ramsey, Langster, Walley, Callicott, Kent, Cole (Carter), Bittle and McDaniel as prime sponsor(s).

House Bill No. 972: Rep(s). Bowers as prime sponsor(s).

House Bill No. 1247: Rep(s). Kisber as prime sponsor(s).

House Bill No. 1280: Rep(s). Curtiss as prime sponsor(s).

House Bill No. 1336: Rep(s). Bittle and Turner (Hamilton) as prime sponsor(s).

House Bill No. 1481: Rep(s). Curtiss as prime sponsor(s).

House Bill No. 1659: Rep(s). Stulce and Turner (Hamilton) as prime sponsor(s).

House Bill No. 1782: Rep(s). Ramsey as prime sponsor(s).

MESSAGE FROM THE GOVERNOR

April 18, 1995

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 1857; also, House Joint Resolution(s) No(s). 91; with his approval.

HARDY MAYS, Counsel to the Governor.

MESSAGE FROM THE SENATE

April 18, 1995

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 798; passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

***Senate Bill No. 798 -- Sentencing --** Adds criminal street gang membership as enhancement factor when defendant has committed prior offense within three years. Amends TCA Title 39, Chapter 12; Title 39, Chapter 11, Part 1 and Title 40, Chapter 35, Part 1. by *Kyle, *Crutchfield, *Person.

SIGNED

April 18, 1995

The Speaker signed the following: Senate Bill(s) No(s). 26, 392, 1343 and 1404; also, Senate Joint Resolution(s) No(s). 151, 152 and 160.

MESSAGE FROM THE GOVERNOR

April 19, 1995

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 149, 464, 782, 853, 1023, 1024, 1097, 1113, 1847, 1855, 1858, 1859 and 1863 with his approval.

HARDY MAYS, Counsel to the Governor.

MESSAGE FROM THE SENATE
April 19, 1995

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 50, 911, 954, 1233, 1493 and 1689; all for the signature of the Speaker.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE
April 19, 1995

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 155 and 157; both for the signature of the Speaker.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE
April 19, 1995

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 383, 492, 667, 679, 1030, 1494, 1846, 1866, 1870 and 1871; all signed by the Speaker.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE
April 19, 1995

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 5, 203, 205, 207 208 and 209; all signed by the Speaker.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

ENROLLED BILLS
April 19, 1995

The following bills have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Bill(s) No(s). 1351; House Joint Resolution(s) No(s). 213, 214, 215, 226 and 229; also, House Resolution(s) No(s). 45 and 50.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED
April 19, 1995

The Speaker signed the following: House Bill(s) No(s). 1351; House Joint Resolution(s) No(s). 213, 214, 215, 226 and 229; also, House Resolution(s) No(s). 45 and 50.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

INTRODUCTION OF RESOLUTIONS

On motion, pursuant to **Rule No. 17**, the resolution(s) listed was/were introduced and referred to the appropriate Committee:

***House Joint Resolution No. 224** -- Memorials, Congress -- Urges Congress to support extension of passenger rail service between New York and Atlanta or Birmingham through East Tennessee. by *Ramsey.

Transportation Committee

House Joint Resolution No. 231 -- General Assembly, Directed Studies -- Directs state board of education to appoint group to conduct assessment of TCAP testing program and Tennessee Value Added Assessment System to ensure integrity and validity of system. by *DeBerry J.

Education Committee

House Joint Resolution No. 234 -- Naming and Designating -- "Destroyer Escort Day," third Saturday of each June. by *Givens, *Patton.

State and Local Government Committee

House Joint Resolution No. 237 -- General Assembly, Studies -- Creates special joint committee to study provision of counseling services or other critical incident stress services to crew members involved in railroad accidents which result in fatalities or serious bodily injury. by *Armstrong, *Turner (Shelby), *Ritchie.

Consumer and Employee Affairs Committee

House Joint Resolution No. 238 -- General Assembly, Studies -- Creates special joint committee to study election laws. by *McDaniel.

State and Local Government Committee

House Joint Resolution No. 240 -- General Assembly, Studies -- Requests transportation committees to jointly study and evaluate alternative avenues of permanent funding for urban and rural public transportation agencies. by *Jones U (Shelby), *DeBerry L, *Bowers, *Towns, *Miller L, *Brown, *Turner (Shelby), *Jones R (Shelby), *Armstrong, *DeBerry J.

Transportation Committee

House Joint Resolution No. 241 -- General Assembly, Studies -- Requests select oversight committee on TennCare to examine issues relating to managed care organizations and their provision of education, equipment, and supplies for self-monitoring of blood glucose levels by diabetics. by *Jones U (Shelby), *DeBerry L, *Bowers, *Towns, *Miller L, *Turner (Shelby), *Brooks.

Commerce Committee

House Joint Resolution No. 242 -- General Assembly, Studies -- Requests select committee on children and youth to perform comprehensive review and evaluation of Tennessee's system of juvenile justice, including juvenile delinquency statutes, juvenile court system, as well as juvenile delinquency prevention, rehabilitation, and correctional programs. by *Jones U (Shelby), *DeBerry L, *Bowers, *Towns, *Miller L, *Brown, *Turner (Shelby), *Brooks.

Judiciary Committee

House Joint Resolution No. 243 -- General Assembly, Studies -- Requests senate general welfare, health and human resources committee and house health and human resources committee to jointly study and evaluate desirability and feasibility of increasing scope and amount of state's present programs of reimbursement for licensed residential homes for aged and licensed supportive living facilities for mentally ill. by *Jones U (Shelby), *DeBerry L, *Bowers, *Towns, *Miller L.

Health and Human Resources Committee

House Joint Resolution No. 244 -- General Assembly, Studies -- Requests senate general welfare, health and human resources committee and house health and human resources committee to jointly examine and evaluate programs and activities of Sarcoidosis Research Institute, Memphis, and to determine desirability and feasibility of providing state funding to institute to help address sarcoidosis issues. by *Jones U (Shelby), *DeBerry L, *Bowers, *Towns, *Miller L, *Brown, *Turner (Shelby).

Health and Human Resources Committee

RESOLUTIONS

Pursuant to **Rule No. 17**, the following resolution(s) was/were introduced and placed on the Consent Calendar for April 20, 1995:

House Resolution No. 53 -- Memorials, Personal Achievement -- Kimberly Byrd Kearney and Joshua Kearney, Ebony Pyramid award nominee. by *Armstrong.

House Resolution No. 54 -- Memorials, Personal Achievement -- Christine and Edward Howard, Gold Pyramid Award nominee. by *Armstrong.

House Resolution No. 55 -- Memorials, Personal Achievement -- Thomas and Mary Ann Thomas, Silver Pyramid Award nominee. by *Armstrong.

House Resolution No. 56 -- Memorials, Personal Achievement -- Frances W. Hall, Ebony Pyramid Award nominee. by *Armstrong.

House Resolution No. 57 -- Memorials, Personal Achievement -- Larry and Sharon Robinson, Silver Pyramid Award nominee. by *Armstrong.

House Resolution No. 58 -- Memorials, Personal Achievement -- Shirley Croom Moore and son, George Thomas "Tommy" Moore, III, Ebony Pyramid award. by *Armstrong.

House Resolution No. 59 -- Memorials, Personal Achievement -- Vernia and Arnold Young, Gold Pyramid Award nominee. by *Armstrong.

House Resolution No. 60 -- Memorials, Personal Achievement -- James and Helen Brown, Gold Pyramid Award nominee. by *Armstrong.

House Resolution No. 61 -- Memorials, Personal Achievement -- William and Carolyn Bryant, Silver Pyramid Award nominee. by *Armstrong.

House Joint Resolution No. 245 -- General Assembly, Statement of Intent or Position -- L.O.V.E. (Let Our Violence End) Campaign. by *Stamps.

House Joint Resolution No. 246 -- Memorials, Sports -- 1994-1995 Science Hill boys' basketball team, TSSAA Class AAA state champions. by *Patton, *Hicks.

RESOLUTIONS LYING OVER

On motion, the resolutions(s) listed was/were referred to the appropriate Committee:

***Senate Joint Resolution No. 42** -- Memorials, Government Officials -- Directs department of environment and conservation, division of archaeology, to develop plan regarding significant shipwreck sites in Tennessee. by *Womack.

State and Local Government Committee

***Senate Joint Resolution No. 142** -- Memorials, Government Officials -- Memorializes department of veterans affairs to establish State Veterans Cemetery in Tennessee to serve Fort Campbell. by *Rice, *Hamilton.

State and Local Government Committee

INTRODUCTION OF BILLS

On motion, the following bills were introduced and passed first consideration:

House Bill No. 1883 -- Gallatin -- Subject to local approval, revises charter relative to qualifications and authority of city recorder or judge pro tem and disposition of fines imposed by city court; removes concurrent jurisdiction of city court with general sessions court; deletes provisions relative to city workhouse. Amends Chapter 67 of the Private Acts of 1953, as amended. by *Stamps, *McDonald.

House Bill No. 1884 -- Gallatin -- Subject to local approval, increases compensation of aldermen and alderwomen. Amends Chapter 67 of the Private Acts of 1953, as amended. by *Stamps, *McDonald.

House Bill No. 1885 -- Carroll County -- At request of Hollow Rock-Bruceton Special School District, authorizes board of education to borrow against anticipated revenues. Amends Chapter 317, Private Acts of 1927, as amended. by *Herron.

House Bill No. 1886 -- Carroll County -- At request of Huntingdon Special School District, authorizes board of education to borrow funds against anticipated revenues. Amends Chapter 374, Private Acts of 1919, as amended. by *Herron.

DELAYED BILLS REFERRED

Pursuant to **Rule No. 77**, having been prefiled for introduction, House Bill(s) No(s). 1888 was/were referred to the Delayed Bills Committee.

***House Bill No. 1888** -- Naming and Designating -- "Destroyer Escort Day," third Saturday of each June. Amends TCA Title 15, Chapter 2. by *Givens.

SENATE BILLS TRANSMITTED

On motion, the Senate Bills listed below, transmitted to the House, were held on the Clerk's desk pending third consideration of the companion House Bill:

***Senate Bill No. 798** -- Sentencing -- Adds criminal street gang membership as enhancement factor when defendant has committed prior offense within three years. Amends TCA Title 39, Chapter 12; Title 39, Chapter 11, Part 1 and Title 40, Chapter 35, Part 1. by *Kyle, *Crutchfield, *Person.

HOUSE BILLS ON SECOND CONSIDERATION

On motion, bills listed below passed second consideration and were referred by the Speaker to Committee or held on the Clerk's desk as noted:

House Bill No. 1842 -- County Officers -- House Judiciary Committee

Pursuant to **Rule No. 47**, the following Caption Bill(s), held on the Clerk's desk were referred to the following Committee(s):

House Bill No. 999 -- Pharmacy -- House Health and Human Resources Committee

House Bill No. 1367 -- Codes -- House State and Local Government Committee

REPORTS FROM STANDING COMMITTEES

The committees that met on **April 18, 1995** reported the following:

COMMITTEE ON CALENDAR AND RULES

The Calendar and Rules Committee met and set the following bill(s) on the **Regular Calendar** for **April 19, 1995**: House Bill(s) No(s). 1086, 1136, 1659, 972 and 1481.

The Committee set the following bills on the **Regular Calendar** for **April 20, 1995**: House Bill(s) No(s). 746, 1075, 1749, 514, 1057, 1063, 1608 and 480.

The Committee set the following bill(s) and/or resolution(s) on the **Consent Calendar** for **April 24, 1995**: House Bill(s) No(s). 1731, 106, 631 and 863.

The Committee set the following bill(s) and/or resolution(s) on the **Consent Calendar** for **April 24, 1995**: House Bill(s) No(s). 629, 656, 1811, 1403, 187, 955, 1278, 1527, 1531 and 1751; also House Joint Resolution(s) No(s). 132 and 185.

COMMERCE

The Commerce Committee recommends for passage: House Bill(s) No(s). 1384, 1716, 1095, 1541, 1046, 1867, 696 and 697; also House Bill(s) No(s). 1303, 914, 1001, 1528, 1099, 1335, 1752 and 965 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 1796; also House Bill(s) No(s). 1800, 1801 and 1808 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

CONSUMER AND EMPLOYEE AFFAIRS

The Consumer and Employee Affairs Committee recommended for passage: House Bill(s) No(s). 1793 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

EDUCATION

The Education Committee recommended for passage: House Bill(s) No(s). 334 and 1423 and House Joint Resolution(s) No(s). 219. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 1744 and 1684; also House Bill(s) No(s). 1501, 475 and 1347 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

FINANCE, WAYS AND MEANS

The Finance, Ways and Means Committee recommended for passage: House Bill(s) No(s). 1338, 594, 1813, 1637, 830, 1615, 1510, 343 and 1348; also House Bill(s) No(s). 1160, 681 and 1625 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

GOVERNMENT OPERATIONS

The Government Operations Committee recommended for passage: House Bill(s) No(s). 449 and 418. Under the rules, each was transmitted to the Calendar and Rules Committee.

HEALTH AND HUMAN RESOURCES

The Health and Human Resources Committee recommended for passage: House Bill(s) No(s). 1150, 1153 and 1419; also House Bill(s) No(s). 1474, 1259, 117, 909, 212, 828, 1558 and 716 and Senate Joint Resolution(s) No(s). 58 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 1798, 1248, 560, 1537 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

STATE AND LOCAL GOVERNMENT

The State and Local Government Committee recommended for passage: House Bill(s) No(s). 1427, 652, 1784, 1316, 1809, 1462, 1461 and 623 and House Joint Resolution(s) No(s). 206, 149, 202, 180, 172 and 217 and Senate Joint Resolution(s) No(s). 93; also House Bill(s) No(s). 571, 1807, 1414, 814, 1441, 1574 and 1789 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 561; also House Bill(s) No(s). 1400 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

REPORTS FROM STANDING COMMITTEES

The committees that met on **April 19, 1995** reported the following:

COMMITTEE ON CALENDAR AND RULES

The Calendar and Rules Committee met and set the following bill(s) on the **Regular Calendar for April 20, 1995**: House Bill(s) No(s). 1341, 165, 1053, 1685, 1518, 1406, 1536, 1504 and 727; also House Joint Resolution(s) No(s). 129.

The Committee set the following bills on the **Regular Calendar for April 24, 1995**: House Bill(s) No(s). 1788, 385, 490, 1078, 393, 33, 585, 1538, 550 and 851.

The Committee set the following bill(s) and/or resolution(s) on the **Regular Calendar for April 27, 1995**: House Bill(s) No(s). 107.

The Committee set the following bill(s) and/or resolution(s) on the **Consent Calendar for April 24, 1995**: House Bill(s) No(s). 927, 1787 and 74; also House Joint Resolution(s) No(s). 206 and 173 and Senate Joint Resolution(s) No(s). 11 and 12.

TRANSPORTATION

The Transportation Committee recommended for passage: House Bill(s) No(s). 220, 1238 and 958 and Senate Joint Resolution(s) No(s).

100; also House Bill(s) No(s). 1040 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 1613 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

JUDICIARY

The Judiciary Committee recommended for passage: House Resolution(s) No(s). 30, 31 and 32. Under the rules, each was transmitted to the Calendar and Rules Committee.

It further recommended that the following be referred to the Finance, Ways and Means Committee: House Bill(s) No(s). 922 with amendments. Pursuant to **Rule No. 72**, each was referred to the Finance, Ways and Means Committee.

CONSENT CALENDAR

House Resolution No. 51 -- Memorials, Professional Achievement--Dr. Harold Vann, Tennessee Medical Association Distinguished Service Award. by *McMillan.

House Joint Resolution No. 230 -- Memorials, Sports -- 1994-1995 Shelbyville High School girls' basketball team, TSSAA state champions. by *Phillips.

House Joint Resolution No. 232 -- Memorials, Professional Achievement -- Charlotte W. Collins, 1995 Nelson Mandela Award for Health and Human Rights. by *DeBerry J, *DeBerry L, *Turner (Shelby), *Brooks, *Miller L, *Towns, *Byrd, *Chumney, *Jones R (Shelby).

House Joint Resolution No. 233 -- Memorials, Recognition and Thanks -- Dennis Prince, Tennessee Southern Railroad, Inc. by *Napier.

House Joint Resolution No. 236 -- Memorials, Personal Occasion -- Arnold and Sue Wyrick, 30th wedding anniversary. by *Windle.

House Joint Resolution No. 239 -- Memorials, Professional Achievement--Dr. David Dodd, Outstanding Physician of the Year. by *Eckles.

Senate Joint Resolution No. 158 -- Memorials, Professional Achievement -- Peggy Tackett, Public Health Worker of the Year. by *Rice.

Senate Joint Resolution No. 161 -- Memorials, Academic Achievement -- Macon County High School Interact Club. by *Burks.

Senate Joint Resolution No. 162 -- Memorials, Sports -- Joseph Amonett, Pickett County High School basketball player. by *Burks.

Senate Joint Resolution No. 163 -- Memorials, Sports -- 1994-1995 Pickett County High School boys' basketball team, TSSAA Class A state champions. by *Burks.

Pursuant to **Rule No. 50**, Rep. Phillips moved that all House Bills having companion Senate Bills and are on the Clerk's desk be conformed and substituted for the appropriate House Bill, all Senate and House Bills on the Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted, and all Senate Joint Resolutions on the Consent Calendar be concurred in, which motion prevailed by the following vote:

Ayes 98
Noes 0

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

A motion to reconsider was tabled.

REGULAR CALENDAR

House Bill No. 341 -- Campaigns -- Requires disclosure of occupation and employer of campaign contributors. Amends TCA Title 2, Chapter 10, Part 1. by *Kisber, *Stamps (*SB29 by *Cohen).

Further consideration of House Bill No. 341 previously considered on March 8, 1995, March 29, 1995 and reset for today's Calendar.

Rep. Kisber moved that House Bill No. 341 be reset to the Calendar for Thursday, May 18, 1995, which motion prevailed.

***House Bill No. 665** -- Claims Commission, Tennessee -- Requires claims commissioners to issue findings of fact and/or opinions of law within 120 days of hearing claim. Amends TCA Title 9, Chapter 8. by *Ritchie (SB1207 by *Haun).

Further consideration of House Bill No. 665, previously considered on March 16, 1995, March 22, 1995, and reset for today's Calendar.

Rep. Ritchie moved that House Bill No. 665 be reset to the Calendar for Wednesday, May 17, 1995, which motion prevailed.

***House Bill No. 1829** -- Henderson -- Subject to local approval, authorizes hotel/motel tax. by *Walley (SB1817 by *Wilder).

Further consideration of House Bill No. 1829, previously considered on March 6, 1995, March 8, 1995, April 5, 1995 and reset for today's Calendar.

Rep. Bittle moved that House Bill No. 1829 be reset to the Calendar for Monday, May 15, 1995, which motion prevailed.

***House Bill No. 1336** -- Environment and Conservation, Department of -- Increases number of members on air control board from 11 to 12; increases number of citizen members on water quality control board from five to six. Amends TCA 68-201-104, 69-3-104. by *Odom, *Cross, *Callicott, *Williams (Williamson), *Jones, S., *Kernell (*SB1843 by *Crutchfield, *Leatherwood, *Wallace, *McNally, *Henry).

Further consideration of House Bill No. 1336, previously considered on April 3, 1995, April 5, 1995 and reset for today's Calendar.

Rep. Odom moved that House Bill No. 1336 be passed on third and final consideration.

Rep. Napier moved adoption of Conservation and Environment Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1336 by deleting Sections 4, 5, 6 and 7 as introduced, and by substituting instead the following:

Section 4. Tennessee Code Annotated, Section 69-3-104(a)(1), is amended by deleting the language " eight (8)" from the first sentence and substituting instead the language, " ten (10)" .

Section 5. Tennessee Code Annotated, Section 69-3-104(a)(1)(D), is amended by deleting the language " five (5)" and substituting instead the language, " seven (7)" .

Section 6. Tennessee Code Annotated, Section 69-3-104(a)(4)(A), is amended by deleting the language " five (5)" and substituting instead the language, " seven (7)" .

Section 7. Tennessee Code Annotated, Section 69-3-104(a)(4)(A), is amended by inserting the following language after the language and punctuation " public-at-large," in the first sentence:

" one (1) shall be representative of environmental interests, one (1) shall be a representative of counties appointed from a list of three (3) persons appointed by the County Services Association," .

On motion, Amendment No. 1 was adopted.

Rep. Napier moved adoption of Conservation and Environment Committee Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 1336 by deleting the language " environmental interests" in the amendatory language of Section 7 and by substituting instead the language " environmental interests appointed from a list of three (3) persons nominated by the Tennessee Conservation League" .

AND FURTHER AMEND by deleting Section 8 in its entirety and by substituting instead the following:

Section 8. Tennessee Code Annotated, Section 69-3-104(a)(4)(A),
is amended by deleting the language " conservation interests" from the first sentence and substituting instead the language " agricultural interests appointed from a list of three (3) persons nominated by the Tennessee Farm Bureau" .

On motion, Amendment No. 2 was adopted.

Rep. Beavers moved that Amendment No. 3 be withdrawn, which motion prevailed.

Rep. Phillips moved the previous question, which motion prevailed.

Rep. Odom moved that **House Bill No. 1336**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	91
Noes	1
Present and not voting	4

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Kent, Kernell, Kerr, Kisber, Langster, Lewis, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Walley, West, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 91.

Representatives voting no were: Head -- 1.

Representatives present and not voting were: Joyce, Peach, Venable, Westmoreland -- 4.

A motion to reconsider was tabled.

House Bill No. 1854 -- Harriman -- Subject to local approval, authorizes hotel/motel tax. by *Cantrell (*SB1843 by *O'Brien).

Further consideration of House Bill No. 1854, previously considered on April 3, 1995, April 5, 1995 and reset for today's Calendar.

Rep. Bittle moved that House Bill No. 1854 be reset to the Calendar for Monday, May 15, 1995, which motion prevailed.

***Senate Bill No. 38** -- Utilities, Utility Districts -- Authorizes commissioners of South Blount County utility board by resolution to increase per diem for not more than 12 meetings to rate not exceeding \$250 per meeting for district having more than 3,000 users and \$100 per meeting for district having 3,000 or fewer users. Amends TCA Title 7, Chapter 82. by *Koella (HB285 by *Clabough).

Further consideration of Senate Bill No. 38, previously considered on March 13, 1995 and April 3, 1995 at which time the House Bill was substituted for the Senate Bill and reset for today's Calendar.

Rep. Bittle moved that Senate Bill No. 38 be reset to the Calendar for Monday, May 15, 1995, which motion prevailed.

House Bill No. 1280 -- Aircraft and Airports -- Requires municipality seeking to use land located outside territorial limits to develop airport to gain approval of appropriate local government before proceeding. Amends TCA Title 42, Chapter 5. by *Newton, *Rhinehart, *Davidson, *Napier, *Head, *Givens, *Davis, *Bell (*SB1202 by *Haun).

On motion, House Bill No. 1280 was made to conform with **Senate Bill No. 1202**; the Senate Bill was substituted for the House Bill.

Rep. Newton moved that Senate Bill No. 1202 be passed on third and final consideration.

On motion, Rep. Tindell withdrew State and Local Government Committee Amendment No. 1.

Rep. Boyer moved the previous question, which motion prevailed.

Rep. Newton moved that **Senate Bill No. 1202** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	82
Noes	9
Present and not voting	6

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Clabough, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, Duer, Dunn, Eckles, Fitzhugh, Ford, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hassell, Head, Hicks, Huskey, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Ramsey, Rhinehart, Ridgeway, Rinks, Roach, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Venable,

Walley, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 82.

Representatives voting no were: Brooks, Chumney, Coffey, Herron, Jackson, Purcell, Ritchie, Robinson, West -- 9.

Representatives present and not voting were: DeBerry, J., DeBerry, L., Fowlkes, Hargrove, Pruitt, Turner (Hamilton) -- 6.

A motion to reconsider was tabled.

House Bill No. 1343 -- Architects and Engineers -- Creates positions of associate engineer members to assist board of architects, engineers, landscape architects, and interior designers. Amends TCA Section 62-2-201. by *Garrett (*SB760 by * Haynes).

On motion, House Bill No. 1343 was made to conform with **Senate Bill No. 760**; the Senate Bill was substituted for the House Bill.

Rep. Garrett moved that Senate Bill No. 760 be passed on third and final consideration.

Rep. Garrett moved adoption of Amendment No. 1 as follows:

Amendment No. 1

AMEND Senate Bill No. 760 by deleting in its entirety subdivision (6) of subsection (c) of Section 1 of the printed bill and by substituting instead the following:

(6) Associate engineer members approved under this subsection shall assist the board with routine matters and responsibilities as requested by the board. Associate engineer members shall attend board meetings, committee meetings and other board functions only as required by the board. Such associate engineer members shall have no voting privileges and are not to be considered as members for quorum or election purposes.

On motion, Amendment No. 1 was adopted.

Rep. Garrett moved that **Senate Bill No. 760**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	95
Noes	0

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey,

Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 95.

A motion to reconsider was tabled.

House Bill No. 764 -- Pensions and Retirement Benefits -- Continues, upon remarriage, survivor retirement benefit from spouse of state employee killed in line of duty. Amends TCA Section 8-36-108. by *Jackson (*SB1029 by *Springer).

On motion, House Bill No. 764 was made to conform with **Senate Bill No. 1029**; the Senate Bill was substituted for the House Bill.

Rep. Jackson moved that **Senate Bill No. 1029** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 96
Noes 0

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

House Bill No. 1179 -- Insurance Companies, Agents, Brokers -- Requires each insurer doing business in more than one state and others as required by commissioner to file with NAIA annual and quarterly financial statement information in computer readable format. Amends TCA Title 56, Chapters 1, 2, 10 and 44. by *Rhinehart (*SB1015 by *Atchley).

Rep. Rhinehart moved that House Bill No. 1179 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1179 by deleting Section 1 of the printed bill in its entirety and substituting instead the following new sections:

SECTION 1. Tennessee Code Annotated, Section 56-1-402,
is amended by adding subsections (d) - (g), as
follows:

(d) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(e) (1) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (d), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(2) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

(f) Each opinion required by subsection (e) shall be governed by the following provisions:

(1) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such

supporting memorandum as is required by the commissioner.

(g) Every opinion shall be governed by the following provisions:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(2) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(3) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(4) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(5) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(6) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(7) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(8) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection herewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the commissioner (a) with the written consent of the company or (b) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of

professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 10, is amended by adding as a new Part 3, entitled Disclosures of Material Transactions, Sections 3 through 5 of this act as new, appropriately designated sections.

SECTION 3.

(a) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of the insurance laws, regulations, or other requirements.

(b) The report required by subsection (a) is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments, shall be filed with:

(1) The insurance department of the insurer's state of domicile; and

(2) The National Association of Insurance Commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this part shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected notice and an opportunity to be heard pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, determines that the interest of policyholders, shareholders or the public will be served by publication, in which event the commissioner may publish all or any part in the manner the commissioner may deem appropriate.

SECTION 4.

(a) No acquisitions or dispositions of assets need be reported pursuant to Section 3 if the acquisitions or dispositions are not material. For purposes of this part, a material acquisition (or the aggregate of any series of related acquisitions during any thirty-day period) or disposition (or the aggregate of any series of related dispositions during a thirty-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b) (1) Asset acquisitions subject to this part include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(2) Asset dispositions subject to this part include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction or other disposition.

(c) (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (A) Date of the transaction;
- (B) Manner of acquisition or disposition;
- (C) Description of the assets involved;
- (D) Nature and amount of the consideration given or received;
- (E) Purpose of, or reason for, the transaction;
- (F) Manner by which the amount of consideration was determined;
- (G) Gain or loss recognized or realized as a result of the transaction; and
- (H) Name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed

business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 5.

(a) (1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to Section 3 if the nonrenewals, cancellations or revisions are not material. For purposes of this part, a material nonrenewal, cancellation or revision is one that affects:

(A) As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(i) More than fifty percent (50%) of the insurer's total ceded written premium; or

(ii) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.

(B) As respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(C) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

(i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or

(ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

(2) However, no filing shall be required if:

(A) As respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or

(B) As respects life, annuity, and accident and health business: the total reserve credit taken for

business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

(b) (1) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

(A) Effective date of the nonrenewal, cancellation or revision;

(B) The description of the transaction with an identification of the initiator thereof;

(C) Purpose of, or reason for, the transaction; and

(D) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material non-renewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 6. Tennessee Code Annotated, Section 56-44-102(a), is amended by adding the following language at the end of subdivision (2):

Each insurer doing business in more than one (1) state, and any other insurers as required by the commissioner, shall also file with the National Association of Insurance Commissioners annual and quarterly financial statement information in computer readable format as required by the Insurance Regulatory Information System.

SECTION 7. Tennessee Code Annotated, Title 56, Chapter 44 is amended by adding the following as a new, appropriately designated section:

The commissioner shall maintain as confidential all information received from the NAIC or insurance departments of other states which is confidential in those jurisdictions. However, the commissioner may share information, including otherwise confidential information, with the NAIC or insurance departments of the states so long

as those jurisdictions are required, under their laws,
to maintain confidentiality.

SECTION 8. Tennessee Code Annotated, Section 56-1-501(h) is amended by adding the following language:

Any determination by the independent certified public accountant that an insurer has materially misstated its financial condition as reported to the commissioner or that an insurer does not meet the minimum capital and surplus requirements of Title 56, shall be reported as set out in the rules promulgated pursuant to this section. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this report of adverse financial condition if such statement is made in good faith in compliance with this section and the rules promulgated pursuant to this section.

SECTION 9. Tennessee Code Annotated, Section 56-3-112, is amended by inserting after the reference to " § 47-8-102" the phrase, ", in Euroclear".

SECTION 10. Tennessee Code Annotated, Section 56-3-302, is amended by adding the following new paragraphs to be appropriately numbered:

() "Bond Assets" means the amount of assets invested in bonds as reported on the balance sheet of the insurer on the most recent annual statement for the twelve (12) month period ending on the thirty-first (31st) day of December next preceding.

() "NAIC-SVO" means the securities valuation office of the national association of insurance commissioners.

() "SVO Rating" means the numerical ranking designation of one (1) through six (6) assigned to securities as determined by the NAIC-SVO.

SECTION 11. Tennessee Code Annotated, Section 56-3-303(a)(2)(B) and (a)(3)(B), are amended by inserting before the respective semicolons the following phrase:

or rated one (1), two (2) or three (3) by the NAIC-SVO

SECTION 12. Tennessee Code Annotated, Section 56-3-303(a)(13)(B)(iii), is amended by inserting between the word "lessee" and the word "has" the phrase "or guarantor of such lease or leases".

SECTION 13. Tennessee Code Annotated, Section 56-3-303(a)(13)(B)(iii), is amended by inserting between the word "lessee" and the word "under" the phrase "or guarantor of such lease" and by inserting between the word "year" and the punctuation ";" the phrase " or is rated one (1), two (2) or three (3) by the NAIC-SVO".

SECTION 14. Tennessee Code Annotated, Section 56-3-303(a), is amended by adding the following new paragraphs to be appropriately designated:

() Ownership interests in short-term investment pools subject to the following:

(A) Pools may invest in obligations that an insurer may acquire under this act that have (i) a maturity of 397 days or less and (ii) are rated 1 or 2 by the NAIC-SVO, or in money market funds;

(B) The maximum investment per pool is 15% of Bond Assets;

(C) The pool manager shall be organized under the laws of the United States and shall be the insurer, an affiliate of the insurer, a commercial bank or an investment advisor approved by the (i) board of directors of the insurer or (ii) a committee appointed by the insurer's board of directors to supervise investments; and

(D) The pool agreement shall be in writing and provide that (i) the participation interest in the pool is issued in the name of the insurer, (ii) all participants in the pool are affiliates, (iii) each participant may withdraw from the pool all or any portion of its interest on demand without penalty or assessment on any business day, (iv) the underlying assets of the pool are held solely for the benefit of each participant and each participant owns an undivided interest in each underlying asset, (v) the pool assets shall be held by a custodian bank in a separate account for the benefit of each pool participant, (vi) the insurer shall maintain detailed accounting records and description of all transactions, and each participant's interest which shall be available for inspection by the commissioner, and (vii) any pool participant shall be entitled to terminate the pool in the event of the insolvency of any other pool participant.

() In money market funds defined by 17 CFR 220.2a-7 under the Investment Company Act of 1940 (15 U.S.C. 80a-I, et seq.) that meet one (1) of the following conditions:

(A) that the funds invest 100% of total assets in United States treasury bills, notes and bonds, and collateralized repurchase agreements comprised of those securities;

(B) that the funds invest 100% of total assets in other full faith and credit instruments of the United States; or

(C) that the funds invest at least 95% of total assets in exempt securities, short-term debt instruments with a maturity of 397 days or less,

NAIC-SVO rated one obligations, and collateralized repurchase agreements comprised of those securities.

() May loan securities either directly or through its custodian bank under this subsection to a broker-dealer registered with the Securities and Exchange Commission or to a bank that is a member of the Federal Reserve System. The market value of loaned securities outstanding at any one time, excluding securities held in a separate account, shall not exceed 20% of the insurer's Bond Assets. Each loan must be evidenced by a written agreement that provides:

(A) that the loan will be fully collateralized by cash, obligations issued or guaranteed by the United States, or agency or an instrumentality thereof, or such other securities as determined by the NAIC-SVO, and that the collateral will be adjusted each business day during the term of the loan to maintain the required collateral in the event of market value changes in the loaned securities or collateral;

(B) that the loan may be terminated by the insurer at any time, and that the borrower must return the loaned securities or their equivalent within five business days after termination;

(C) that the collateral shall be held either by the insurer or its custodian bank;

(D) that the insurer has the right to retain the collateral or to use the collateral to purchase securities equivalent to the loaned securities if the borrower defaults under the terms of the agreement; and

(E) that the borrower remains liable for any losses and expenses, not covered by the collateral, which are incurred by the insurer due to default.

SECTION 15. Tennessee Code Annotated, Section 56-3-304, is amended by adding the following new subsection to be appropriately designated:

The commissioner shall adopt rules authorizing insurers to invest an amount not to exceed an additional ten percent (10%) of its admitted assets in foreign investments. The rules shall establish:

- (1) investment standards; and
- (2) diversification requirements.

Prior to adoption of such rules, the commissioner may approve for a particular company a plan to make foreign investments not to exceed an additional ten percent (10%) of its admitted assets, if the commissioner determines that the plan contains adequate quality and diversification standards.

SECTION 16. Tennessee Code Annotated, Section 56-11-205(a), is amended by deleting the date "March 1" and substituting therefor the date "April 30".

17. AND FURTHER AMEND by redesignating current Section 2 as Section

CHAIR TO DEBERRY

Mr. Speaker Naifeh relinquished the Chair to Rep. DeBerry, Speaker pro tempore.

REGULAR CALENDAR, CONTINUED

On motion, Amendment No. 1 was adopted.

Rep. Rhinehart moved that **House Bill No. 1179**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	96
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

Representatives present and not voting were: Brown -- 1.

A motion to reconsider was tabled.

House Bill No. 1643 -- Loan Companies -- Requires pawnbrokers to retain pledged property for 45 rather than 50 days prior to sending notice to pledgor prior to forfeiture of property to pawnbroker. Amends TCA Title 45. by *Rhinehart (*SB1605 by *Cooper).

Rep. Rhinehart moved that House Bill No. 1643 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1643 by deleting all language after the
enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 45-6-203
(2), (3) and (6) are amended by deleting the subdivisions in
their entirety and by substituting instead the following:

(2) "Pawn" or "Pawn transaction" means either of
the following transactions:

(A) A "buy-sell" agreement means any
agreement whereby a pawnbroker agrees to hold a
property (pledged goods) for a specified
period of time not to be less than sixty (60)
days to allow the seller the exclusive right to repurchase
the property. A buy-sell agreement is not a loan of
money, but shall still meet all recording
procedures to law enforcement officers as with
a pawn transaction; or

(B) A "loan of money" transaction means any
loan on the security of pledged goods and
being a written bailment of pledged goods as
a security lien for such loan, for the cash
advanced, interest and fees authorized by this act,
redeemable on certain terms and with the implied
power of sale on default;

For purposes of all state and federal bankruptcy
laws, a pledgor's interest in his or her
pledged goods during the pendency of a pawn
transaction shall be deemed to be that of a
right of redemption only.

(3) "Pawnbroker" means any person, partnership or
corporation engaged in the business of
lending money on the security of pledged goods; or
engaged in the business of purchasing tangible
personal property on condition that it may be redeemed and
repurchased by the seller for a fixed price
within a fixed period of time; or engaged in the
business of advancing money to a customer in
consideration for the customer surrendering possession of
tangible personal property on an agreement by which
the property may be returned to the customer's
possession on repayment of the money advanced; and
engaged in the business of selling new and used
tangible personal property, whether unredeemed tangible
personal property resulting from a pawn transaction,
or acquired by a purchase of tangible personal property
not acquired in a pawn transaction or purchased
merchandise for resale from dealers and traders.

(6) "Pledged goods" means tangible personal
property, other than choses in action, securities,
printed evidences of indebtedness or title
documents, which tangible personal property is purchased by,
deposited with, or otherwise actually delivered into
the possession of a pawnbroker in connection with a

pawn transaction, and shall include the term
"pawn" or "pledged property" or similar words

SECTION 2. Tennessee Code Annotated, Section
45-6-203, is amended by adding the following new subdivisions
at the end of the section:

(7) "Maturity date of pawn transaction" means the
date the pawn transaction is due to be paid, which
date shall not be less than thirty (30) days after the
date of the pawn transaction.

(8) "Pledgor" means the pawn loan customer of the
pawnbroker, entering into a pawn
transaction with the pawnbroker.

SECTION 3. Tennessee Code Annotated, Section 45-6-204,
is amended by deleting the section in its entirety and by
substituting instead the following:

Section 45-6-204. Authority of Licensed
Pawnbrokers.

(a) A pawnbroker licensed pursuant to this
part shall have power to:

(1) Make loans on the security of
pledged goods as a pawn or pawn
transaction;

(2) Purchase tangible personal
property under a buy-sell agreement
from individuals as a pawn or pawn
transaction on the condition it may be redeemed or
repurchased by the seller at a fixed price within
a fixed time not to be less than sixty
(60) days;

(3) Lend money on bottomry and
respondentia security, at marine
interest;

(4) Deal in bullion, stocks and public
securities;

(5) Make loans on real estate, stocks
and personal property;

(6) Purchase merchandise for resale
from dealers and traders;

(7) Make over-the-counter purchases of
goods which the seller does not intend
to buy back. The pawnbroker shall hold
such goods for a period of not less than
fifteen (15) days before offering the
merchandise for resale; and

lawful (8) Use its capital and funds in any manner within the general scope and purposes of its creation.

(b) Notwithstanding the provisions of this section, except for a pawn or pawn transaction authorized by this act, no pawnbroker shall have the power as enumerated in this section without first complying with the law regulating the particular transactions involved.

SECTION 4. Tennessee Code Annotated, Section 45-6-206(a)(4), is amended by deleting the subdivision in its entirety.

SECTION 5. Tennessee Code Annotated, Section 45-6-209(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) The pawnbroker shall, at the time of making the pawn transaction and/or buy-sell transaction, enter upon the pawnshop copy of the records as well as on the pawn ticket, and/or buy-sell ticket, the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including serial numbers if pledged articles shall bear such;

(2) The date of the pawn transaction;

(3) The amount of cash loan advanced on the pawn transaction;

(4) The exact value of property as stated by pledgor who pledges same;

(5) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction; and

(6) The name, race, sex, height, weight, date of birth, residence address and numbers from the items used as identification. Acceptable items of identification are one (1) of the following documents:

(i) a state-issued driver's license;

(ii) a state-issued identification card;

(iii) a passport;

(iv) a valid military identification;

(v) a non-resident alien border crossing card;

(vi) a resident alien border crossing card; or

(vii) a United States immigration and
naturalization service identification.

SECTION 6. Tennessee Code Annotated, Section 45-6-209(d), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(d) These records shall be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid. Further, these records shall be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located.

SECTION 7. Tennessee Code Annotated, Section 45-6-210, is amended by deleting the section in its entirety and by substituting instead the following:

Section 45-6-210. Rate of Interest - Other Charges Permitted. In connection with and for a pawn or pawn transaction, no pawnbroker shall demand and receive a rate of interest greater than two (2) percent per month of the amount of the loan advance under the pawn or pawn transaction, and no other charge of any description, for any purpose whatsoever, shall be made by the pawnbroker; except that the pawnbroker may charge, contract for and receive a fee not to exceed one-fifth (1/5) of the amount of the loan advance under the pawn or pawn transaction for investigating the title, storage, insuring the pledged goods, closing the loan, making daily reports to local law enforcement officers and for other expenses, losses of every nature whatsoever and for all other services. Such fee when made and collected shall not be deemed interest for any purpose of law. Such interest and fee shall be deemed to be earned, due and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due and owing on the same day of each subsequent month.

SECTION 8. Tennessee Code Annotated, Section 45-6-211, is amended by deleting the section in its entirety and by substituting instead the following:

Section 45-6-211. Failure to Redeem -

(a) In every pawn transaction made under a loan of money pawn transaction as defined herein, the pawnbroker shall retain in his possession the pledged goods for thirty (30) days after the maturity date of the pawn transaction. Pledged goods not redeemed by the pledgor on or before the maturity date of the pawn transaction set out in the pawn ticket issued in connection with any pawn transaction may be redeemed by the pledgor within such period of thirty (30) days after the maturity date of the pawn transaction by the payment of the originally agreed redemption price (interest, fee and loan amount), and

the payment of the additional interest and fee for
the period following the original maturity date due on the pawn
transaction.

(b) But if the pledgor fails to redeem the
pledged goods within thirty (30) days
after the maturity date of the pawn
transaction, the pledgor shall thereby forfeit all right,
title and interest of, in and to the pledged goods to the
pawnbroker, who shall thereby acquire an absolute
title to the pledged goods and the debt becomes
satisfied, and the pawnbroker shall have the authority to
sell or dispose of the unredeemed pledged goods as
his own and he may, if he decides, sell the
unredeemed pledged goods.

(c) It is provided, however, that if the pledgor
shall lose his pawn ticket, he shall not thereby
forfeit his right to redeem the pledged goods, but
may promptly, before the lapse of the final
redemption date, make affidavit for such loss; describing
the pledged goods, which affidavit shall take the
place of the pawn ticket, unless the pledged
goods have already been redeemed under this part.

d) The following information shall be printed on
all pawn tickets or buy-sell tickets:

(i) "ANY PERSONAL PROPERTY PLEDGED TO A
PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE
OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE
ON THE ACCOUNT FOR A PERIOD OF THIRTY (30) DAYS
AFTER THE MATURITY DATE OF THE PAWN TRANSACTION
AND NO FURTHER NOTICE IS NECESSARY";

THAT IT (ii) "THE PLEDGOR OF THIS ITEM ATTESTS
ENCUMBRANCES IS NOT STOLEN, IT HAS NO LIENS OR
THE RIGHT TO SELL AGAINST IT AND THE PLEDGOR HAS
OR PAWN THE ITEM";

BY (iii) "THE ITEM PAWNED IS REDEEMABLE ONLY
THE BEARER OF THIS TICKET"; and

(iv) a blank line for the pledgor's
signature.

SECTION 9. Tennessee Code Annotated, Section 45-6-212, is
amended by adding the following new subdivision at the end of the
section:

(11) Enter into any pawn transaction which has a
maturity date less than thirty (30) days after the date of the
pawn transaction.

SECTION 10. Tennessee Code Annotated, Section 45-6-213(a),
is amended by deleting the subsection in its entirety and by
substituting instead the following:

(a) Any person who sells property to a pawnbroker or pledges property as security for a loan shall obtain and record the information provided for in Tennessee Code Annotated, Section 45-6-209(b) (6) and obtain a statement of the pledgor that he or she is the lawful owner of such item, as provided in Tennessee Code Annotated, Section 46-6-211(d), and have the record signed by the person from whom he receives the property. This record shall be made available to any law enforcement agency or officer upon request.

SECTION 11. Tennessee Code Annotated, Section 45-6-219, is amended by designating the existing language as (a), and adding the following language as subdivisions (5) and (6):

(a)

(5) Require reports or pawn tickets providing identification, information or descriptions different from that required in Tennessee Code Annotated, Section 45-6-209.

(6) Require a pawnbroker to hold over-the-counter purchase of goods which the seller does not intend to buy back for a period of more than fifteen (15) days before offering the merchandise for resale.

SECTION 12. Tennessee Code Annotated, Section 45-6-219, is further amended by adding the following as a new appropriately designated subsection:

(b) A law enforcement official from any county, municipality, city or taxing district may not charge a pawnbroker, firm or corporation a fee for receiving, reviewing or processing daily reports or pawn tickets as defined in Tennessee Code Annotated, Section 45-6-209, or any other information required by such law enforcement official.

SECTION 13. Tennessee Code Annotated, Title 45, is amended by adding the following new chapter with sections appropriately designated:

45-15-101. Short Title.

This part shall be known and may be cited as the "Tennessee Title Pledge Act."

45-15-102. Purpose.

The making of title pledge loans vitally affects the general economy of this state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this chapter to:

- through (1) Ensure a sound system of making title pledge loans licensing of title pledge lenders;
- (2) Provide for licensing requirements;
- (3) Ensure financial responsibility to the public;

(4) Assist local governments in the exercise of their police power.

45-15-103. Definitions.

(1) "Capital" means the assets of a business entity less the liabilities of that business entity. Assets and liabilities shall be measured according to Generally Accepted Accounting Principles (GAAP) or relevant pronouncements of the Financial Accounting Standards Board (FASB).

(2) "Person" means any sole proprietorship, general partnership, corporation or limited liability company duly qualified to do business in Tennessee.

(3) "Pledged property" means any titled personal property or personal property certificate of title that is deposited with a title pledge lender in the course of the title pledge lender's business and is the subject of a title pledge agreement or property pledge agreement.

(4) "Title pledge agreement" means a thirty (30) day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor. The pledgor shall agree for the title pledge lender to keep possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title pledge agreement. When the certificate of title is redeemed, the title pledge lender shall release the security interest in the titled personal property and return the personal property certificate of title to the pledgor. The title pledge agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original thirty (30) day agreement period, or at the end of any thirty (30) day renewal(s) thereof, the title pledge lender shall be allowed to take possession of the titled personal property. The title pledge lender shall retain physical possession of the certificate of title for the entire length of the title pledge agreement, but shall not be required to retain physical possession of the titled personal property at any time. A title pledge lender may only hold unencumbered certificates of title for pledge.

(5) "Title pledge lender" means any person engaged in the business of making title pledge agreements and/or property pledge agreements with pledgors;

(6) "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business.

(7) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(8) "Property pledge agreement" means any written bailment or similar agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees for the title pledge lender to take physical possession of unencumbered titled personal property owned by the pledgor, and to take possession of the personal property certificate of title. The pledgor shall have the exclusive right to redeem the titled personal property by repaying the loan of money in full and by complying with the property pledge agreement. When the titled personal property is redeemed, the title pledge lender shall return the titled personal property and the certificate of title to the pledgor. The property pledge agreement shall provide that upon failure by the pledgor to redeem the titled personal property at the end of the original thirty (30) day agreement period, or the end of any subsequent thirty (30) day renewal(s) thereof, the title pledge lender shall be allowed to sell or otherwise dispose of the titled personal property.

45-15-104. Authority of licensed title pledge lenders.

(1) A title pledge lender licensed pursuant to this chapter shall have the power to make loans of money on pledges of personal property certificates of title or on pledges of titled personal property in accordance with the provisions of this act.

(2) Title pledge lenders licensed pursuant to this chapter shall not have the powers enumerated in this act without first complying with the law regulating title pledge agreements and property pledge agreements, but title pledge lenders exercising any of the powers in compliance with this act's provisions shall not be deemed in violation of Tennessee Code Annotated Sections 47-9-504(3), 47-14-112, or 47-14-117. No action shall be brought by a pledgor against a title pledge lender in connection with a title pledge agreement or property pledge agreement more than one (1) year after the date of the alleged occurrence of any violation of this act.

45-15-105. License required.

It is unlawful for any person to be a title pledge lender unless such person has first procured a license to conduct such business in the manner and form as provided in this act.

45-15-106. Eligibility requirements for license.

(a) To be eligible for a title pledge lender's license, an applicant must be operating as a sole proprietorship, general partnership, a corporation or limited liability company duly qualified to do business in Tennessee, and must:

- (1) Have capital of at least seventy-five thousand dollars (\$75,000) per title pledge office; and
- (2) Represent that the business will be operated lawfully, fairly and ethically within the purpose of this chapter.

(b) If so requested, on or after January 1, 1996, by the appropriate law enforcement agency in any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, have a computer system which is capable of electronically transferring information on pledged titled vehicles or vehicle certificates of title to the sheriff or local law enforcement agency where such title pledge office is located.

45-15-107. Petition for license - Fee for investigation.

(a) Every person desiring to be a title pledge lender shall petition the county clerk in the county in which the person's title pledge office is to be operated for a license to conduct such a business.

(b) Such petitions shall provide:

(1) The name of all individual(s) having a beneficial ownership interest in the business, and, in the case of a corporation, all individuals serving as officers or directors, whether or not such persons have a beneficial ownership interest;

(2) The place, street, and number where the title pledge office is to be operated;

(3) The amount of capital to be used in the business, accompanied by an unaudited financial statement from a certified public accountant;

(4) An affidavit from each individual outlined in Tennessee Code Annotated, Section 45-15-107(b)(1) stating that each individual has not been convicted of a felony within the ten (10) year period preceding the date of application; and

(5) Certified funds in the amount of fifty dollars (\$50) payable to the county clerk to defray costs.

45-15-108. Granting of license - Fees - Transfer of License - Renewals.

(a) Every person having satisfied the provisions of this act and having paid the business and any other taxes required by law shall be granted a license as provided herein. The license issued hereunder shall state the name of the person to whom issued, the place of business and street number where the title pledge office is located, and the amount of capital employed. Such license shall entitle the person to do business at the place designated in such license. Such license shall not be transferable from one (1) person to another, but may be transferred from one (1) location to another, or from one (1) county to another, upon payment to the county clerk of any county involved in the transfer, a fee of fifty dollars (\$50).

(b) A title pledge lender license shall be renewed each year upon payment of the business tax.

45-15-109. Record of transactions required - Inspection.

(a) Every title pledge lender shall keep a consecutively numbered record of each and every title pledge agreement or property pledge agreement executed. Such record, as well as the title pledge agreement or property pledge agreement itself, shall include the following:

- (1) a clear and accurate description of the titled personal property, including its vehicle identification number, if applicable, license plate number (if applicable), year, make, model, type, and color;
- (2) the date of the title pledge or property pledge agreement;
- (3) the amount of the loan made pursuant to the title pledge or property pledge agreement;
- (4) the date of maturity of the loan; and
- (5) the name, race, sex, height, date of birth, social security number, residence address, and the type and unique identification number of the photo identification of the pledgor.

(b) The pledgor shall sign the title pledge agreement or property pledge agreement, and shall be provided with a copy of such agreement. The title pledge agreement or property pledge agreement shall also be signed by the title pledge lender, his employee or his agent.

(c) This information shall be made available for inspection by the sheriff of the county and the chief of police of the municipality in which the title pledge lender is located during the regular business hours of the title pledge office.

45-15-110. Recording of liens.

The title pledge lender shall be required to record his or her security interest in titled personal property by noting liens on the certificate of title for all title pledge transactions, but shall not be required to note liens for property pledge transactions in which the title pledge lender retains possession of both the titled personal property and the certificate of title during the entire term of the transaction.

45-15-111. Rate of interest and charges.

(a) A title pledge lender shall contract for and receive an effective rate of interest not to exceed two percent (2%) per month; additionally, the title pledge lender may charge, contract for, and receive a customary fee to defray the ordinary costs of

operating a title pledge office, including without limitation, investigating the title, appraising the titled personal property, insuring the personal property when in the physical possession of the title pledge lender, documenting and closing the title or property pledge transaction, making required reports to local law enforcement officials, for all other services provided by the title pledge lender, advertising, for losses on title pledge or property pledge transactions, salaries, and for all other expenses incurred by the title pledge lender except those in Tennessee Code Annotated, Section 45-15-111(b). Such a fee shall not be deemed interest for any purpose of law, and such fee may equal no more than one-fifth (1/5th) of the original principal amount of the title pledge agreement or property pledge agreement, or of the total unpaid balance due at the inception of any renewal thereof. Such interest and fees shall be deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing on the same day of each subsequent thirty (30) day period.

(b) Title pledge lenders may assess and collect, as reimbursement, a repossession charge not to exceed the actual amount charged by any company(s), attorney(s) and/or contractor(s) to repossess the titled personal property and deliver such titled personal property to the storage facility of the title pledge lender.

45-15-112. Right to redeem.

Except as otherwise provided in this act, the pledgor, upon presentation of suitable identification shall be entitled to redeem the titled personal property and/or certificate of title described therein upon satisfaction of all outstanding obligations pursuant to the title pledge or property pledge agreement and this act.

45-15-113. Thirty (30) day agreements - Renewal of agreements.

Title pledge agreements and property pledge agreements made pursuant to this act shall not exceed thirty (30) days in length. However, such agreements may provide for renewals for additional thirty (30) day periods, which may occur automatically, unless one of the following has occurred:

- (1) The pledgor has redeemed the pledged titled personal property or certificate of title by paying all principal, interest, and customary fees due in accordance with the title pledge agreement or property pledge agreement;
- (2) The pledgor has surrendered possession, title and all other interest in and to the titled personal property and the certificate of title to the title pledge lender;
- (3) The title pledge lender has notified the pledgor in writing that the title pledge agreement or property pledge agreement is not to be renewed; or

(4) Default by pledgor of any obligation pursuant to the title pledge agreement or property pledge agreement.

45-15-114. Twenty (20) day holding period - Failure to redeem.

(a) Upon expiration of a property pledge agreement and the final renewal thereof, if any, the title pledge lender shall retain possession of the titled personal property and the certificate of title for at least twenty (20) days. If the pledgor fails to redeem the titled personal property and the certificate of title before the lapse of the twenty (20) day holding period, the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property to the title pledge lender, who shall thereby acquire an absolute right of title to the titled personal property, and the title pledge lender shall have the right and authority to sell or dispose of the unredeemed pledged property.

(b) The title pledge lender has, upon default by the pledgor of any obligation pursuant to the title pledge agreement, the right to take possession of the titled personal property. In taking possession, the title pledge lender or his agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. After taking possession of the titled personal property, the title pledge lender shall retain possession of the titled personal property and the certificate of title for a twenty (20) day holding period.

(1) If, during the twenty (20) day holding period, the pledgor pays the repossession fee, and redeems the titled personal property and certificate of title by paying all outstanding principal, interest, and other customary fees, the pledgor shall be given possession of the titled personal property and the certificate of title without further charge.

(2) If the pledgor fails to redeem the titled personal property and certificate of title during the twenty (20) day holding period, then the pledgor shall thereby forfeit all right, title, and interest in and to the titled personal property and certificate of title, to the title pledge lender, who shall thereby acquire an absolute right of title and ownership to the titled personal property. The title pledge lender shall then have the sole right and authority to sell or dispose of the unredeemed titled personal property.

(c) If the pledgor loses the title pledge agreement or property pledge agreement or other evidence of the transaction, the pledgor shall not thereby forfeit the right to redeem the pledged property, but may promptly, before the lapse of the redemption date, make affidavit for such loss, describing the pledged property, which affidavit shall, in all respects, replace and be substituted for the lost evidence of the pledge transaction.

45-15-115. Prohibited actions.

A title pledge lender shall not:

(1) Accept a pledge from a person under eighteen (18) years of age; from anyone who appears to be intoxicated; or from any person known to such title pledge lender to have been convicted of larceny, burglary or robbery;

(2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of this act;

(3) Enter into a title pledge agreement in which the amount of money loaned in consideration of the pledge of any single certificate of title exceeds two thousand five hundred (\$2,500) dollars. However, no such prohibition shall exist regarding the amount of money loaned in a property pledge transaction as defined in Tennessee Code Annotated, Section 45-15-103(8);

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this part;

(5) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificates of title in the physical possession of the title pledge lender;

(6) Purchase titled personal property in the operation of its business;

(7) Maintain more than one (1) title pledge office or place of operation for each title pledge lender under each license. However, any such licensee may move from one (1) place of business to another, as provided in Tennessee Code Annotated, 45-15-108(a); or

(8) Keep open such title pledge office before eight o'clock a.m. (8:00 a.m.) or after six o'clock p.m. (6:00 p.m.) of any day during the year, with the exception of November 25 through December 24 of each year. During those days, the title pledge lender may open such place of business at eight o'clock a.m. (8:00 a.m.) and shall be entitled to close at nine o'clock p.m. (9:00 p.m.); provided that any municipality which contains within its corporate limits a portion of a military reservation which is located partially within the boundary of the state of Tennessee and partially within the boundary of another state and which has a population of not less than fifty-three thousand (53,000) and not more than seventy-five thousand (75,000) according to the 1990 federal census or any subsequent federal census, may extend such hours of operation by ordinance of the governing body beyond the hours of operation established pursuant to this subdivision, but such extension of hours shall not exceed

the hours authorized in the closest contiguous state to such municipality.

45-15-116. Safekeeping of titled personal property or personal property certificates of title - Insurance coverage - Damaged property.

Every title pledge lender licensed under the provisions of this act shall provide a safe place for the keeping of the pledged property. The title pledge lender shall have sufficient insurance coverage on the pledged property, in the event of loss or damage, for the benefit of the pledgor to pay the title pledge value of the pledged property as written on the title pledge or property pledge agreement, provided such personal property is in the physical possession of the title pledge lender. Such insurance policy shall name the county clerk as an additional insured party for the protection and benefit of the pledgor. Title pledge value for the purposes of this section, means the amount of money loaned in consideration of the pledged goods as stated on the title pledge or property pledge agreement.

45-15-117. Penalties.

Every person who knowingly violates any of the provisions of this part, on conviction thereof, commits a Class A misdemeanor. If such violation is by an owner or major stockholder or partner of the title pledge office, and such violation is knowingly committed by the owner, major stockholder or partner of the title pledge office, then the license of such title pledge lender may be suspended or revoked.

45-15-118. Authority of municipal corporations to regulate.

All of the incorporated municipalities, cities and taxing districts in this state shall have authority by ordinance to adopt the provisions of this part and shall have authority to adopt such further rules and regulations as the legislative councils of such incorporated municipalities, cities and tax districts may deem right and proper. No incorporated municipality, city or taxing district shall have authority to regulate:

- (1) Interest, fees and other charges;
- (2) Hours of operation;
- (3) The nature of the business or types of title pledge or property pledge agreements;
- (4) Eligibility of pledgors; or
- (5) License requirements.

45-15-119. Acquiring a license / Maintaining an existing license.

Any licensed pawnbroker in the business of contracting for title pledges or making title pledge agreements as of the effective date of this act, may apply for a title pledge license upon payment to the county clerk of a fee of fifty dollars (\$50).

The county clerk shall issue such license, without further conditions or qualifications, if such application is made within sixty (60) days from the effective date of this act. Any person receiving a title pledge license under the provisions of this section shall also have the right to continued renewals of such license pursuant to Tennessee Code Annotated §45-15-108(b).

SECTION 14. This act shall take effect upon passage, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

On motion, Rep. Rhinehart withdrew Commerce Committee Amendment No. 2.

Rep. Rhinehart moved adoption of Amendment No. 3 as follows:

Amendment No. 3

AMEND House Bill No. 1643 by deleting in Section 10 of Amendment 1, the language " Any person who sells property to a pawnbroker or pledges property as security for a loan" and by substituting instead the language " When any person sells property to a pawnbroker or pledges property as security for a loan, the pawnbroker" .

AND FURTHER AMEND by adding the following as an appropriately designated new section:

SECTION _____. The provisions of Tennessee Code Annotated, Title 55, Chapter 17, Part 1, shall apply to all sales and transfers of any motor vehicle acquired under the provisions of this act.

AND FURTHER AMEND by adding the following as an appropriately designated new section:

SECTION _____. If any provision of this act is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

AND FURTHER AMEND by adding the following as an appropriately designated new section:

SECTION _____. Tennessee Code Annotated, Section 45-1-104, is amended by deleting the language " of this title." , and by substituting instead the language " of this title or persons licensed under the Tennessee Title Pledge Act of 1995."

On motion, Amendment No. 3 was adopted.

Rep. Rhinehart moved that **House Bill No. 1643**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes

Noes 15
Present and not voting 2

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Bragg, Buck, Burchett, Byrd, Callicott, Chumney, Clabough, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Dunn, Eckles, Ford, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Hicks, Huskey, Jones, S., Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McMillan, Miller, Napier, Odom, Patton, Peach, Phelan, Phillips, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Ritchie, Roach, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Williams (Union), Williams (Williamson), Wood, Mr. Speaker Naifeh -- 77.

Representatives voting no were: Brooks, Brown, Cantrell, Coffey, Duer, Fitzhugh, Herron, McKee, Newton, Pinion, Rinks, White, Whitson, Windle, Winningham -- 15.

Representatives present and not voting were: Boyer, Fowlkes -- 2.

A motion to reconsider was tabled.

House Bill No. 1649 -- Uniform Commercial Code -- Revises Uniform Commercial Code relative to commercial paper, bank deposits and collections. Amends TCA Title 47, Chapters 1, 3 and 4. by *West, *Fitzhugh, *Hargrove, *Byrd(*SB1601 by *Rochelle).

Rep. West moved that House Bill No. 1649 be reset to the Calendar for Monday, April 24, 1995, which motion prevailed.

House Bill No. 1380 -- Education -- Restricts policy of state in education of handicapped children to comply with federal law requirements. Amends TCA 49-10-101. by *Davis, *Huskey, *Roach (*SB1582 by *Haun).

Rep. Davis moved that House Bill No. 1380 be reset to the Calendar for Monday, April 24, 1995, which motion prevailed.

***House Bill No. 111** -- Employees, Employers -- Increases maximum fee from \$250 to \$300 applicant for initial staff leasing company license may be charged. Amends TCA Title 62, Chapter 43, Part 1. by *Rinks, *West (SB189 by *Springer).

Rep. Rinks moved that House Bill No. 111 be passed on third and final consideration.

Rep. Armstrong moved adoption of Consumer and Employees Affairs Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 111 by deleting in its entirety all the language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-43-103(a), is amended by deleting the language of subdivision (4) in its entirety and by substituting instead the following language:

Commissioner means the commissioner of commerce and insurance or the commissioner's authorized representative.

SECTION 2. Tennessee Code Annotated, Section 62-43-103, is amended by deleting the text of subsection (b) in its entirety and adding the following language:

() Notwithstanding any other provision of the law to the contrary, employee or staff leasing companies shall not be required to be registered as provided by or comply with the provisions of Title 62, Chapter 31, Section 201.

SECTION 3. Tennessee Code Annotated, Section 62-43-105, is amended by deleting the text in its entirety and by substituting instead the following language:

Financial information and information related to clients obtained from any applicant or licensee pursuant to the administration of this chapter, except to the extent necessary for proper enforcement and administration of this chapter, shall be confidential and shall not be published or open to inspection by the public.

SECTION 4. Tennessee Code Annotated, Section 62-43-106, is amended by deleting the language "within a twelve-month period" .

SECTION 5. Tennessee Code Annotated, Section 62-43-108(a), is amended by deleting the language "not to exceed two hundred fifty dollars (\$250.00)" and by inserting a period after the language "nonrefundable application fee" .

SECTION 6. Tennessee Code Annotated, Section 62-43-108(b)(1), is amended by deleting the second sentence in (G) in its entirety.

SECTION 7. Tennessee Code Annotated, Section 62-43-109(b), is amended by deleting the existing language in its entirety and by substituting the following language:

The commissioner shall furnish the applicant with a written statement of the reason(s) for denying the applicant's initial application. The applicant shall have sixty (60) days from the date appearing on the written statement of denial to submit proof that the reason(s) for denial has been cured, provided that it is the commissioner's decision as to whether or not the defect(s) has been cured and whether or not to issue the license.

SECTION 8. Tennessee Code Annotated, Section 62-43-109, is amended by deleting subsection (c) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 62-43-110(a), is amended by deleting the language " unless revoked," from the first sentence.

SECTION 10. Tennessee Code Annotated, Section 62-43-110, is amended by deleting the second sentence of subsection (a).

SECTION 11. Tennessee Code Annotated, Section 62-43-110(b), is amended by deleting the text in its entirety and substituting the following paragraph:

At least thirty (30) days prior to the expiration of its license, the licensee shall submit an application for renewal of a license on a form prescribed by the commissioner accompanied by the renewal fee established by the commissioner. Licenses shall be subject to late renewal for a period of up to six (6) months following their expiration date by payment of the renewal fee plus a penalty as set by the commissioner for each month or fraction of a month which elapses before payment is tendered.

SECTION 12. Tennessee Code Annotated, Section 62-43-111, is amended by deleting the word " annual" from the first sentence of subsection (a).

SECTION 13. Tennessee Code Annotated, Section 62-43-111, is amended by deleting the text of subsection (d) in its entirety and substituting the following language:

Application fees for an initial license or a renewal thereof shall be submitted at the time of application and made payable to the state of Tennessee. Application fees shall be nonrefundable.

SECTION 14. Tennessee Code Annotated, Section 62-43-112, is amended by deleting the language " for up to twelve (12) months," in the first sentence of subsection (a).

SECTION 15. Tennessee Code Annotated, Section 62-43-112, is amended by deleting the text of subsection (c) in its entirety and by substituting the following language:

(c) The provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, shall govern all matters and procedures regarding the hearing and judicial review of any contested case, as defined therein, arising under this chapter.

SECTION 16. Tennessee Code Annotated, Section 62-43-112, is amended by adding the following new subsection:

() Upon suspension or revocation of a license, the commissioner shall as soon as is practicable:

(1) Notify the Tennessee department of labor; and

(2) Notify each client of which the commissioner has knowledge of the licensee's revocation or suspension.

SECTION 17. Tennessee Code Annotated, Section 62-43-112, is amended by adding the following new subsection:

() Upon the suspension or revocation of a license, the holder of the revoked or suspended license shall:

(1) Immediately cease soliciting clients for staff leasing services;

(2) Not execute additional contracts or enter into any arrangement wherein it agrees to provide staff leasing services; and

(3) Wind down the operations of the staff leasing entity so that the staff leasing entity will no longer be in operation sixty (60) days after the effective date of the revocation or suspension.

SECTION 18. Tennessee Code Annotated, Section 62-43-113, is amended by deleting subsection (d) in its entirety, by deleting from subsection (b) the text of subdivision (3), and by inserting the following language as a new subsection (c) following subsection (b), renumbering subsection (c) as new subsection (d):

(c) A licensed staff leasing company shall:

(1) Ensure that its Tennessee employees are covered by workers' compensation insurance provided in accordance with Title 50 and the applicable Tennessee insurance laws and regulations.

(2) Provide to the commissioner, before issuance of any license pursuant to this chapter, evidence of workers' compensation coverage for all leased employees in this state who are subject to the Tennessee Workers' Compensation Law.

(3) Notify the commissioner and its clients within ten (10) days of any notice of cancellation of its workers' compensation coverage.

(4) Notify the commissioner, and its workers' compensation carrier, if applicable, of the termination of the staff leasing company's relationship with any client to which employees within this state are assigned.

SECTION 19. Tennessee Code Annotated, Section 62-43-113, formerly subsection (c) and now (d) is amended by deleting the text in its entirety and substituting the following language:

(d) (1) A staff leasing company may sponsor and maintain employee benefit and welfare plans for the benefit of its leased employees. Any of those plans which are plans of insurance must comply with the applicable provisions of the insurance laws of this state.

(2) An applicant or licensee shall disclose to the commissioner, to each client company and to all eligible leased employees the following information relating to any benefit plan of insurance provided for the benefit of its leased employees:

(A) The type of coverage and a copy of the insurance policy or certificate or summary plan description;

(B) The identity of each insurer for each type of coverage;

(C) The amount of benefits for each type of coverage and to whom or on whose behalf benefits will be paid; and

(D) The policy limits on each insurance policy.

(3)

(A) There is hereby established a committee to adopt a plan establishing the criteria for a staff leasing company sponsoring and maintaining a plan of self-insurance for health benefits. The committee, appointed by the commissioner, shall be composed of six (6) persons, at least two (2) of whom shall be from the staff leasing business. The department of commerce and insurance shall provide personnel, services, information and other assistance to the committee as needed to make its recommendations.

(B) The plan adopted by the study committee shall be filed with the commissioner on or before January 1, 1997.

(C) Within thirty (30) days the commissioner shall approve such plan for self-insurance, unless the commissioner, after due notice and hearing, shall determine that such plan is not in the public interest.

(D) Any licensed staff leasing companies which have established self-insured health benefit programs prior to January 1, 1997 shall have until July 1, 1997 to either come into compliance with any approved plan criteria or obtain insurance coverage for their leased employees.

(4) Nothing herein shall require a staff leasing company to provide comparable benefits to leased employees located at different worksites.

SECTION 20. Tennessee Code Annotated, Section 62-43-113, formerly (e)(3) is amended by deleting the text "employer's liability" from the first sentence and "employer's liability," from the second sentence.

SECTION 21. Tennessee Code Annotated, Section 62-43-115(b), is amended by deleting the text of subdivision (3) and by substituting the following language:

(3) Impose a civil penalty of up to one thousand dollars (\$1,000.00) for each set of facts constituting a separate violation.

SECTION 22. Tennessee Code Annotated, Section 62-43-116, is amended by deleting the text of subsection (a) in its entirety and substituting the following language:

The commissioner may impose civil penalties of up to one thousand dollars (\$1,000.00) per occurrence upon any person who engages in the business of or acts as a staff leasing company without a license or upon any person who otherwise violates the provisions of this chapter or any rules promulgated by the commissioner pursuant to this chapter.

SECTION 23. Tennessee Code Annotated, Title 62, Chapter 43, is amended by adding the following as a new section:

SECTION _____. For the purposes of any tax levied on gross receipts by this state or any county, municipality, or other political subdivision within this state, the term "gross receipts" shall mean with respect to a staff leasing company, the amount of administrative fees received by the staff leasing company, rather than the gross charges of the staff leasing company to its clients which gross charges include wages and payroll taxes thereon. In the event the staff leasing company fails to establish the amount of its administrative fees to the satisfaction of the taxing entity, then the staff leasing company's gross receipts shall be deemed to be the excess of its gross charges or billings over its cost of wages and actual payments to third parties for payroll taxes, workers' compensation and employee benefits.

SECTION 24. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Rep. Rinks moved that **House Bill No. 111**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 79

Noes 5
Present and not voting 1

Representatives voting aye were: Armstrong, Beavers, Bell, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis, DeBerry, J., Duer, Dunn, Fitzhugh, Fowlkes, Givens, Gunnels, Haley, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, U. (Shelby), Kent, Kernell, Kisber, Langster, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Stamps, Stulce, Tindell, Turner (Hamilton), Turner (Shelby), Walley, West, Westmoreland, White, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 79.

Representatives voting no were: Arriola, Cross, Joyce, Kerr, Towns -- 5.

Representatives present and not voting were: Shirley -- 1.

A motion to reconsider was tabled.

House Bill No. 1247 -- Highway Signs -- "Salem Cemetery Battlefield," I-40, Exit 85. by *McDaniel (*SB1525 by *Carter).

On motion, House Bill No. 1247 was made to conform with **Senate Bill No. 1525**; the Senate Bill was substituted for the House Bill.

Rep. McDaniel moved that Senate Bill No. 1525 be passed on third and final consideration.

Rep. Robinson moved adoption of Transportation Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND Senate Bill No. 1525 by adding after Section 3 of the current bill the following language as an appropriately numbered new section and renumbering the subsequent sections accordingly:

Section ____ This act shall become operative only if the federal highway administrator advises the commissioner of transportation in writing that the provisions of this act shall not render Tennessee in violation of federal laws and regulations and subject to penalties prescribed therein.

On motion, Amendment No. 1 was adopted.

Rep. McDaniel moved that **Senate Bill No. 1525**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 96
Noes 0

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole

(Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

House Bill No. 467 -- Sunset Laws -- Personnel recruiting services board, June 30, 2003. Amends TCA Title 4, Chapter 29; Title 62, Chapter 31. by *Kernell, *Garrett, *Brooks (*SB490 by *Haynes).

Rep. Kernell moved that House Bill No. 467 be reset to the Calendar for Thursday, April 20, 1995, which motion prevailed.

House Bill No. 1350 -- Charitable Solicitations -- Decreases time for authorizing documentation to be filed with secretary of state by solicitor from 30 to 15 days. Amends TCA Title 48, Chapter 3, Part 5. by *Kisber (*SBI558 by *Crutchfield).

On motion, House Bill No. 1350 was made to conform with **Senate Bill No. 1558**; the Senate Bill was substituted for the House Bill.

Rep. Kisber moved that Senate Bill No. 1558 be passed on third and final consideration.

On motion, Rep. Armstrong withdrew Consumer and Employee Affairs Committee Amendment No. 1.

Rep. Kisber moved that **Senate Bill No. 1558** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	85
Noes	6
Present and not voting	2

Representatives voting aye were: Armstrong, Arriola, Bell, Bird, Bittle, Bowers, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Eckles, Fitzhugh, Fowlkes, Garrett, Givens, Gunnels, Halteman Harwell, Hassell, Head, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Kent, Kernell, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Stamps, Stulce, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 85.

Representatives voting no were: Haley, Herron, Kerr, Peach, Sharp, Towns -- 6.

Representatives present and not voting were: Dunn, Ford -- 2.

A motion to reconsider was tabled.

House Bill No. 1591 -- Taxes, Severance -- Authorizes Decatur County to allocate severance tax on sand, gravel, sandstone, chert and limestone to be applied to any county fund rather than just to road fund Amends TCA Title 67, Chapter 7, Part 2. by *Rinks (*SB1707 by *Springer).

Rep. Rinks moved that House Bill No. 1591, be reset to the Calendar for Wednesday, May 17, 1995, which motion prevailed.

***House Bill No. 1782** -- Minority Affairs -- Provides that any person, who claims to be aggrieved by discriminatory practice prohibited by Civil Rights Act of 1964, Title VI, may file complaint within 180 days of alleged discriminatory act. Such complaint shall be filed with federal funding agency, with state agency through which federal funding was transmitted, or with human rights commission. Remedies may include withholding or withdrawal of federal funds. Amends TCA Title 4, Chapter 21, Part 9. by *Davis, *Kerr, *Davis, *Williams (Union), *Westmoreland, *Duer, *Coffey, *Clabough, *Patton, *Boyer, *Kent, *Newton, *Beavers, *Cantrell, *Sharp, *Peach, *McKee, *Hicks, *Ford S, *Roach, *Haley, *Bird, *Wood(*SB1771 by *Haun, *McNally, *Atchley).

Rep. Davis moved that House Bill No. 1782 be passed on third and final consideration.

Rep. Jones R (Shelby) moved adoption of State and Local Government Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1782 by inserting the following language at the end of the amendatory language of Section 1:

3. The commission, acting through its executive director, is empowered to issue, at any time after the filing of a complaint, subpoenas or subpoenas duces tecum to require attendance of persons and submission of documents, at specified times and places, to give testimony in the case or matter therein stated. The subpoena shall mention the names of the parties to the hearing and the party at whose instance the witness is called, and if necessary, require the witness also to bring any books, documents, or other writing under the person's control which may be pertinent to the hearing.

4. Service of such subpoena shall be had by a designated representative of the commission handing a copy of the subpoena to such witness, or if the witness cannot be found, then leaving a copy of the subpoena at the usual place of residence of the witness. Such process shall run throughout the state.

5. Failure of any witness so subpoenaed to attend shall be certified by the executive director of the commission to the chancery court in whose judicial district such witness resides, and such chancery court shall exercise authority granted it by law in the treating of contempt of court matters, including those powers granted in §29-9-103 - 29-9-105; all to the end that the witness shall be compelled to appear at a time and place specified by the chancery court.

6. Any witness who appears as ordered, but upon appearance refuses to testify on matters not privileged by law, shall be punished as prescribed by Section 5.

7. Any witness so subpoenaed shall be reimbursed necessary traveling expenses from such witness' home to the place of hearing and other necessary expenses as determined by the executive director of the commission, consistent with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

8. The executive director of the commission may, whenever deeming such aid necessary, request the aid of any and all agencies of the state of Tennessee. Unless good and sufficient reason can be shown why the particular state agency should not render such aid, any request by the executive director of the commission shall be honored and the agency so requested shall give full aid, support and cooperation to the commission in such investigation.

On motion, Amendment No. 1 was adopted.

REMARKS

Rep. Brooks asked that the following remarks be spread in the Journal.

Madam Speaker, members of the House - the Attorney General has advised me that there are two provisions of this bill (House Bill 1782) which are constitutionally suspect. (The AG's memorandums are on your desk) The first constitutionally suspect provision is the section of the bill that states remedies "under this part may include the withholding or withdrawal of federal funds available through state agencies".

The Attorney General states that this provision is constitutionally suspect as a violation of the supremacy clause of the United States constitution. According to the Attorney General, the supremacy clause of the constitution prohibits states from preempting or superseding the federal law. States have no authority to do this. The federal statute, rules and regulations pursuant to Title VI (42 U.S.C. section 2000D- 1) authorizes the federal departments involved to issue rules and regulations related to alleged discrimination and also the power to review allegations of discrimination, conduct hearings, and try to effectuate voluntary compliance. Most importantly, this statute appears to give the federal agencies the exclusive power of determining when to terminate or refuse to continue federal assistance under any program or activity. There does not appear to be any authority given to any other agency, and there does not appear to be any authority given to any state regulatory board to make such a

determination. It is also noteworthy that before any such termination can take place, the House and Senate need to be notified and 30 days needs to have passed before such action can become effective.

The department of Justice regulations are fairly extensive. These regulations make it clear; however, that it is the responsibility of the federal department issuing the federal funds to review any practices about which there are complaints and to make efforts to see that there is compliance with the federal regulations by at least attempting informal discussions. Further, it is the responsible federal agency that must make a determination to terminate or refuse to grant the continued federal financial assistance.

The proposed state statute House Bill 1782 would appear to be in conflict with these extensive federal rules and regulations. The proposed bill would give the Tennessee Human Rights Commission (and presumably the Tennessee courts upon review) the power to determine whether Title VI rules and regulations have been honored by various state agencies. These rules and regulations, and their applicability may vary from department to department, from federal agency to federal agency, and may be very fact specific. The federal scheme authorizes the federal department granting the funds to determine compliance, investigate compliance, and make determinations as to whether a state agency is in violation of any of these rules or regulations. No authority appears to be granted to a state agency to make such assessment.

The Attorney General further states that a conflict would certainly arise if there were different findings by a federal agency than those of the Tennessee Human Rights Commission. If the federal agency investigated a particular matter and determined that the state entity was in compliance, how then could the Tennessee Human Rights Commission come to a different conclusion? If the Tennessee Human Rights Commission did come to a different conclusion, what authority would it have under federal rules and regulations to turn down the federal funds when the federal agency was ready, willing, and able to give those funds to the state entity involved. Furthermore, the Attorney General states that this bill is suspect because it appears to authorize the Tennessee Human Rights Commission the authority to review, and potentially overrule, the findings by the federal agency. Such a statutory scheme would appear to be in direct violation of the federal statutory scheme, rules, regulations and would, therefore violate the supremacy clause of the United States Constitution.

The second constitutionally suspect provision of this bill deals with the proposed statutory enactment, mandating that a complaint regarding Title VI can be filed within 180 days. It is the opinion of the Attorney General that any aspect of the proposed legislation which would address the time frame in which to file a complaint for a Title VI violation with a federal agency is constitutionally suspect. If the legislature wants to impose a 180 day time frame regarding filing complaints with appropriate state agencies, there would appear to be nothing prohibiting the legislature from doing so.

The portion of the proposed legislation that is constitutionally suspect; however, is that portion which states that a complaint may be filed with a federal agency alleging violations of Title VI within 180 days of the occurrence of the alleged discriminatory act. The

supremacy clause would prohibit this state from issuing laws that would conflict with existing federal laws.

Pursuant to 42 U.S.C. 2000D, each federal department and agency "is authorized and directed to effectuate the provisions of 2000D of this Title with respect to such program or activity by issuing rules, regulations, or orders of general applicability..." Title VI does not contain a time frame in which to file such complaints with appropriate federal agencies. By the express provisions of 42 U.S. C. 2000D, each agency may issue its own rules and regulations regarding such enforcement.

The 180 day filing requirement under Tennessee law seems to comport with most federal agency regulations regarding the time frame in which to file a Title VI complaint. It should be noted that it is at least possible, however, for a federal agency to impose a different time frame, or no time frame at all. For instance, the federal regulations issued by TVA, codified in 18 CFR et seq do not appear to contain similar 180 day filing provisions. See 18 CFR 1302. 7. Thus, it is evident that it is possible for the state provision requiring the filing of complaints with federal agencies within 180 days to conflict with some other federal regulation.

Therefore, accordingly, the Tennessee Attorney General finds this proposed legislation, which attempts to restrict the filing of a complaint with a federal agency to 180 days, to be constitutionally suspect.

Madam Speaker, in light of the Attorney General's opinion regarding the constitutionally suspect nature of this bill, I move adoption of Amendment Number 2.

Rep. Brooks moved adoption of Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 1782 by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 21, Part 9 is amended by adding the following language as a new, appropriately designated section:

(a)

(1) As used in this section, " Title VI" means Title VI of

the Civil

(2) There is hereby created an independent entity of state government, to be known as the Title VI Compliance Authority. The authority shall be governed by a board of directors consisting of eleven (11) members as provided in

this section.

(b) The board of directors shall consist of nine (9) citizen members appointed by the governor, three (3) of whom shall reside in each grand division of the state. Additionally, the board shall consist of two (2) non-voting, legislative members as follows: one (1) member of the senate, to be appointed by the speaker of the senate to a two (2) year term; and one (1) member of the house of representatives, to be appointed by the speaker of the house of representatives to a two (2) year term.

(c) Each of the nine (9) citizen members of the board of directors shall be appointed for a term of six (6) years. A citizen member may be appointed to serve not more than two (2) consecutive six (6) year terms.

(d) The board of directors shall annually elect one of its voting members to serve as chairperson. A quorum of the board shall consist of six (6) voting members.

(e) Citizen members of the board of directors shall be appointed on a nonpartisan basis and shall reflect the state's racial and ethnic diversity. At least three (3) of the citizen members shall be African Americans; at least one (1) citizen member shall be sixty-five (65) years of age or older; and at least one (1) citizen member shall be a woman. Board members shall, by virtue of education and/or experience, collectively possess broad knowledge and expertise pertaining to matters of government, commerce, law, human rights, and ethics. No citizen member serving on the board of directors shall be an officer or employee of any agency or entity of federal, state, or local government; no member serving on the board of directors shall be a subrecipient or an owner, officer, or employee of a subrecipient of federal state government; and no member

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shall be a subcontractor or an owner, officer, or employee of a subcontractor of a subrecipient of federal funds transmitted through an entity of state government.

(f) In the event of the death or resignation of a board member, such member's successor shall be appointed to serve the balance of the unexpired term.

(g) Citizen members of the board are entitled to reimbursement for expenses incurred in the performance of duties pursuant to this section, such reimbursement to be paid in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

Legislative members of the board shall also be entitled to reimbursement for expenses incurred in the performance of such duties, such reimbursement to be paid in the manner established by the provisions of Tennessee Code Annotated, Section 3-1-106, for attendance at legislative committee meetings.

(h) The board of directors of the Title VI Compliance Authority shall have power to:

- (1) establish and maintain a central office;
- (2) meet and exercise its powers throughout the state;
- (3) employ an executive director, attorneys, investigators, clerks, and other employees as it may deem necessary;
- (4) review current Title VI monitoring and enforcement procedures as reflected by federal and state statutes, rules, regulations, programs, services, budgetary priorities, and Title VI implementation plans;
- (5) define and establish the components, guidelines and objectives of a comprehensive state policy to ensure and promote present and future compliance with Title VI;
- (6) identify any Tennessee laws, rules, programs, services,

budgetary priorities, and Title VI implementation plans which conflict with the components, guidelines, and objectives of such comprehensive policy;

(7) search for any interdepartmental gaps, inconsistencies, and inefficiencies in the implementation of such comprehensive policy;

(8) identify any new laws, rules, programs, services, budgetary priorities, and implementation plans which are needed to ensure and promote present and future compliance with and enforcement of Title VI;

(9) serve as an in-house informational resource for the general assembly on legislative policy matters concerning monitoring compliance with and enforcement of Title VI;

(10) serve as the central coordinating agency of state government for provision of technical assistance, consultation, and resources to encourage and assist compliance by state governmental entities and by the subrecipients of federal funds transmitted through such entities, with the requirements of Title VI;

(11) conduct research, hold public hearings, publish reports, and engage in other activities to inform Tennesseans of the provisions and requirements of Title VI;

(12) serve as a clearinghouse for allegations of Title VI noncompliance committed by state governmental entities and by the subrecipients of federal funds transmitted through such entities;

(13) investigate such allegations of noncompliance;

(14) exercise such powers as are conferred on committees of the general assembly pursuant to the provisions of Tennessee Code Annotated, Title 3, Chapters 3 and 4, provided, however, such powers shall be exercised by the board with respect to a particular state governmental entity, or subrecipient of a state governmental

entity, if and only if such entity or subrecipient has timely failed to voluntarily comply with a reasonable informational request submitted in writing by the board;

(15) prevent violations of Title VI by state governmental entities and by the subrecipients of federal funds transmitted through such entities, by means of litigation filed in the chancery court of Davidson County seeking equitable remedy including, but not necessarily limited to, injunction of expenditure of federal funds by the state governmental entity and by the subrecipients of federal funds transmitted through such entity; provided, however, such litigation shall be filed by the board if, and only if, a particular entity or subrecipient has failed for a period of at least thirty (30) days to voluntarily comply with the board's written recommendation that the entity or subrecipient cease and/or desist from a specified policy or practice which violates Title VI;

(16) promulgate, in accordance with the uniform administrative procedures act, Tennessee Code Annotated, Title 4, Chapter 5, such rules as may be reasonably necessary to implement the provisions of this act in an effective and efficient manner;

(17) report annually to the governor and the general assembly on the authority's activities, findings, and recommendations; and

(18) perform such other activities as are reasonably related to the objectives of this section.

(i) It is the legislative intent that, to the extent legally permissible, funding for the Title VI Compliance Authority shall be annually appropriated from that portion of the state's federal grant assistance which is available to defray the state's administrative expenses.

SECTION 2. This act shall take effect on July 1, 1995, the public welfare requiring it.

Rep. Davis moved that Amendment No. 2 be tabled, which motion prevailed by the following vote:

Ayes	64
Noes	27
Present and not voting	1

Representatives voting aye were: Arriola, Beavers, Bird, Bittle, Boyer, Buck, Burchett, Callicott, Cantrell, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, Duer, Dunn, Eckles, Ford, Fowlkes, Givens, Gunnels, Haley, Halteman Harwell, Hassell, Head, Herron, Hicks, Huskey, Jackson, Joyce, Kent, Kerr,

Lewis, McAfee, McDaniel, McDonald, McKee, Newton, Patton, Peach, Phelan, Pinion, Ramsey, Rhinehart, Ridgeway, Rinks, Roach, Sharp, Shirley, Stamps, Stulce, Venable, Walley, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood -- 64.

Representatives voting no were: Armstrong, Bell, Bowers, Brooks, Brown, Byrd, Chumney, DeBerry, J., DeBerry, L., Fitzhugh, Garrett, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Kernell, Kisber, Langster, McMillan, Miller, Odom, Pruitt, Ritchie, Robinson, Tindell, Towns, Turner (Shelby), West -- 27.

Representatives present and not voting were: Bragg -- 1.

Rep. Brooks moved adoption of Amendment No. 3 as follows:

Amendment No. 3

AMEND House Bill No. 1782 by adding the following new section immediately preceding the effective date section and by renumbering the subsequent section accordingly:

Section _____. If any provision of this act or the application thereof to any person or circumstance is held invalid, then all provisions and applications of this act are declared to be invalid and void.

Rep. Davis moved that Amendment No. 3 be tabled, which motion prevailed by the following vote:

Ayes 63
Noes 27
Present and not voting 1

Representatives voting aye were: Arriola, Beavers, Bird, Bittle, Boyer, Buck, Burchett, Byrd, Callicott, Cantrell, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Givens, Gunnels, Haley, Halteman, Harwell, Hassell, Head, Herron, Hicks, Huskey, Joyce, Kent, Kerr, Lewis, McAfee, McDaniel, McDonald, McKee, Napier, Newton, Patton, Peach, Phelan, Pinion, Ramsey, Rhinehart, Ridgeway, Rinks, Roach, Sharp, Shirley, Stamps, Stulce, Venable, Walley, Westmoreland, White, Whitson, Williams (Union), Winningham, Wood -- 63.

Representatives voting no were: Armstrong, Bell, Bowers, Brooks, Brown, Chumney, DeBerry, L., Garrett, Hargrove, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Kernell, Kisber, Langster, McMillan, Miller, Odom, Pruitt, Ritchie, Robinson, Tindell, Towns, Turner (Shelby), West, Williams (Williamson), Windle -- 27.

Representatives present and not voting were: Bragg -- 1.

REQUEST TO CHANGE VOTE

Pursuant to Rule No. 31, the following member(s) desire to change their original stand from not voting to no on the tabling motion for Amendment No. 3 and have this statement entered in the Journal: Rep(s). DeBerry, J.

REGULAR CALENDAR, CONTINUED

Rep. Towns requested that House Bill No. 1782 be reset to the Calendar for Wednesday, April 26, 1995, which motion was immediately withdrawn.

Rep. Davis moved that House Bill No. 1782 be reset to the Calendar for Wednesday, April 26, 1995, which motion prevailed.

CHAIR TO SPEAKER

Mr. Speaker Naifeh resumed the Chair.

REGULAR CALENDAR, CONTINUED

***House Bill No. 1** -- Criminal Procedure -- Enacts "Post-Conviction Procedure Act." Amends TCA 40-26-105, Title 40, Chapter 30, by *Hargrove, *Purcell, *Buck, *Jackson, *Williams (Williamson), *Ridgeway, *Kisber, *Head, *Cross, *Odom, *Rinks, *Rigsby, *Davidson, *Herron, *Chumney, *Fitzhugh, *Lewis, *White, *Fowlkes, *Curtiss, *Eckles, *Phelan, *McMillan, *Hassell, *Cole (Dyer), *Bird, *Stamps, *McDonald, *Haley, *West (SB377 by *Kyle).

Rep. Hargrove moved that House Bill No. 1 be passed on third and final consideration.

On motion, Rep. Buck withdrew Judiciary Committee Amendment No. 1 because of drafting errors.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as House Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 1 by deleting SECTION 1, 2 and 3 in their entirety and substituting instead the following;

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 30 is amended by deleting the chapter in its entirety and by substituting instead the following:

§ 40-30-101. Short title.--This chapter may be referred to as the "Post-Conviction Procedure Act."

§ 40-30-102. When prisoners may petition for post-conviction relief.-- (a) Except as provided in subsection (b) and (c), a person in custody under a sentence of a court of this state must petition for post-conviction relief under this chapter within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred. The statute of limitations shall not be tolled for any reason.

(b) Consideration of a petition filed after such time shall be barred unless:

(1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional right that was not recognized as existing at the time of trial;

(2) The claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and said conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

(c) This chapter contemplates the filing of only one (1) petition for post conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in Section 40-30-118.

§ 40-30-103. Grounds for relief.--(a) Relief under this chapter shall be granted when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the constitution of this state or the Constitution of the United States.

§ 40-30-104. Petition.--(a) A post-conviction proceeding is commenced by filing with the clerk of the court in which the conviction occurred a written petition naming the State of Tennessee as the respondent. No filing fee shall be charged.

Petitions challenging misdemeanor convictions not in a court of record shall be filed in a court of record having criminal jurisdiction in the county in which the conviction was obtained, and the case shall be assigned as set forth in section 40-30-105(b).

(b) The petitioner shall provide all information required by this section. Petitions which are incomplete shall be filed by the clerk, but shall be completed as set forth in an order entered in accordance with § 40-30-106(d).

(c) The petition for post-conviction relief shall be limited to the assertion of claims for relief from the judgment or judgments entered in a single trial or proceeding. If the petitioner desires to obtain relief from judgments entered in separate trials or proceedings, he must file separate petitions.

(d) The petitioner shall include all claims known to him for granting post-conviction relief and shall verify under oath that he has done so.

(e) The petitioner shall include allegations of fact supporting each claim for relief set forth in the petition and allegations of fact explaining why each ground for relief was not previously presented in any earlier proceeding. The petition and any amended petition shall be verified under oath. Affidavits, records or other evidence available to the petitioner supporting the allegations of the petition may be attached to it.

(f) The petitioner shall provide the name of any attorney licensed to practice law who drafts or has given assistance or advice regarding drafting the petition for post-conviction relief.

(g) Amendments to the petition shall conform substantially to the form for original petitions, except that matters alleged in the original petition need not be repeated.

§ 40-30-105. Processing of petitions--designation of judge.--

(a) When in receipt of a petition applying for post-conviction relief, the clerk of the trial court shall forthwith:

- (1) Make three (3) copies of the petition;
- (2) Docket and file the original petition and its attachments;
- (3) Mail one copy of the petition to the attorney general and reporter in Nashville;
- (4) Mail or forward one (1) copy of the petition to the district attorney general;
- (5) Mail or forward one (1) copy to petitioner's original attorney;
- (6) Advise the presiding judge that the petition has been filed; and
- (7) Deliver the petition, its attachments, and all available files, records, transcripts, and correspondence relating to the judgment under attack to the assigned judge for preliminary consideration.

(b) At either the trial proceeding or an appellate proceeding reviewing the proceeding, the presiding judge of the appropriate

court shall assign a judge to hear the petition. The issue of competency of counsel may be heard by a judge other than the original hearing judge. If a presiding judge is unable to assign a judge, the Chief Justice of the Supreme Court shall designate an appropriate judge to hear the matter.

(c) A petition for habeas corpus may be treated as a petition under this chapter when the relief and procedure authorized by this chapter appear adequate and appropriate, notwithstanding anything to the contrary in Tennessee Code Annotated, Title 29, Chapter 21, or any other statute.

§ 40-30-106. Preliminary consideration.--(a) The trial judge to whom the case is assigned shall, within thirty (30) days of the filing of the original petition, or a petition amended in accordance with subsection (d) of this section, examine it together with all the files, records, transcripts, and correspondence relating to the judgment under attack, and enter an order in accordance with the provisions of this section or § 40-30-107.

(b) If it plainly appears from the face of the petition, any annexed exhibits or the prior proceedings in the case that the petition was not filed in the court of conviction or within the time set forth in the statute of limitations or that a prior petition was filed attacking the conviction and was resolved on the merits, the judge shall enter an order dismissing the petition. The order shall state the reason for the dismissal and the facts requiring dismissal. If the petition is dismissed as untimely, the order shall state or the record shall reflect the date of conviction, whether an appeal was taken, the name of each court to which an appeal was taken, the date of the final action by each appellate court, and the date upon which the petition was filed.

(c) If it appears that a post-conviction petition challenging the same conviction is already pending in either the trial court, Court of Criminal Appeals, or Supreme Court, the judge shall enter an order dismissing the subsequent petition. The order shall state the style of the pending petition and in which court it is pending.

(d) The petition must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition.

(e) If a petition amended in accordance with subsection (d) of this section is incomplete, the court shall determine whether the petitioner is indigent and in need of counsel. The court may appoint counsel and enter a preliminary order if necessary to secure the filing of a complete petition. Counsel may file an amended petition within thirty (30) days of appointment.

(f) Upon receipt of a petition in proper form, or upon receipt of a petition amended in accordance with subsection (d) of this section, the court shall examine the

allegations of fact in the petition. If the facts alleged, taken as true, fail to show that the petitioner is entitled to relief or fail to show that the claims for relief have not been waived or previously determined, the petition shall be dismissed. The order of dismissal shall set forth the court's conclusions of law.

(g) A ground for relief is waived if the petitioner on his own or through his attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented unless:

(1) the claim for relief is based upon a constitutional right not recognized as existing at the time of trial if either the state or federal constitution requires retroactive application of that right; or

(2) the failure to present the ground was the result of state action in violation of the federal or state constitution.

(h) A ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing. A full and fair hearing has occurred where the petitioner is afforded the opportunity to call witnesses and otherwise present evidence, regardless of whether the petitioner actually introduced any evidence.

(i) If the petition is not dismissed pursuant to this rule, the court shall enter a preliminary order as provided in § 40-30-107.

§ 40-30-107. Preliminary order.--(a) If the petition is not dismissed upon preliminary consideration, the court shall enter a preliminary order.

(b) In all cases, the preliminary order shall direct the following:

(1) If a petitioner not represented by counsel requests counsel and the court is satisfied that the petitioner is indigent as defined in § 40-14-201, the court shall appoint counsel to represent the petitioner.

(2) If counsel is appointed or retained, or the petitioner is proceeding pro se, counsel or the petitioner if proceeding pro se must file an amended petition or a written notice that no amendment will be filed. Said amended petition or notice shall be filed within thirty (30) days of the entry of the preliminary order, unless extended for good cause. The written notice, if filed by counsel, shall state that counsel has consulted the petitioner and that the petitioner agrees there is no need to amend the petition. Good cause will not be met by a routine statement that the press of other business prevents the filing of the appropriate pleadings within the designated time.

§ 40-30-108. Answer or response.--(a) The district attorney general shall represent the state and file an answer or other responsive pleading within thirty (30) days, unless

extended for good cause. Good cause will not be met by a routine statement that the press or other business prevents a response within the thirty (30) day period. Failure by the state to timely respond does not entitle the petitioner to relief under the post-conviction act.

(b) If the petition does not include the records or transcripts, or parts of records or transcripts that are material to the questions raised therein, the district attorney general is empowered to obtain them at the expense of the state and may file them with the responsive pleading or within a reasonable time thereafter.

(c) The district attorney general may at such general's option assert by motion to dismiss that:

(1) The petition is barred by the statute of limitations;

(2) The petition was not filed in the court of conviction;

(3) The petition asserts a claim for relief from judgments entered in separate trials or proceedings;

(4) A direct appeal or post-conviction petition attacking the same conviction is currently pending in the trial or appellate courts;

(5) The facts alleged fail to show that the petitioner is entitled to relief; or

(6) The facts alleged fail to establish that the claims for relief have not been waived or previously determined.

(d) The answer shall respond to each of the allegations of the petition and shall assert such affirmative defenses as the district attorney general deems appropriate.

§ 40-30-109. Prehearing procedure.--(a) The court shall review the case after the district attorney general's response is filed. If, on reviewing the petition, the response, files, and records, the court determines conclusively that the petitioner is entitled to no relief, the court shall dismiss the petition. The order of dismissal shall set forth the court's conclusions of law. If the court does not dismiss the petition the court shall enter an order setting an evidentiary hearing. The order of dismissal or the order setting an evidentiary hearing shall be entered no later than thirty (30) days after the filing of the state's response. The evidentiary hearing shall be within four (4) calendar months of the entry of the court's order. Such deadline shall not be extended by agreement, and such deadline may be extended only by order of the court based upon a finding that unforeseeable circumstances render a continuance a manifest necessity. Such extension shall not exceed sixty (60) days.

(b) Discovery is not available in a proceeding under this section except as provided under Rule 16 of the Tennessee Rules of Criminal Procedure.

(c) The petitioner may withdraw a petition at any time prior to the hearing without prejudice to his rights to refile, but the withdrawn petition shall not toll the statute of limitations set forth in Section 40-30-102.

§ 40-30-110. Hearing.--(a) The petitioner shall appear and give testimony at the evidentiary hearing if his petition raises substantial questions of fact as to events in which he participated, unless the petitioner is incarcerated out of state, in which case the trial judge may permit the introduction of an affidavit or deposition of the petitioner and shall permit the state adequate time to file any affidavits or depositions in response it may wish.

(b) (1) If the petitioner is imprisoned, the warden shall arrange for transportation of the petitioner to and from the court upon proper orders issued by the trial judge.

(2) The sheriff of the county where the proceeding is pending shall have the authority to receive and transport the petitioner to and from the penitentiary and the court, if the court so orders or if for any reason the warden is unable to transport him. The sheriff shall be entitled to the same costs allowed for the transportation of prisoners as is provided in criminal cases upon the presentation of the account certified by the judge and district attorney general.

(c) Proof upon the petitioner's claim or claims for relief shall be limited to evidence of the allegations of fact in the petition.

(d) All evidentiary hearings shall be recorded.

(e) The Tennessee Rules of Evidence shall apply except as otherwise required in this chapter.

(f) The petitioner shall have the burden of proving the allegations of fact by clear and convincing evidence. There is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived.

§ 40-30-111. Final disposition of petitions.--(a) If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable, including a finding that trial counsel was ineffective on direct appeal, the court shall vacate and set aside the judgment or order a delayed appeal as hereinafter provided and shall enter an appropriate order and any supplementary orders that may be necessary and proper. Costs shall be taxed as in criminal cases.

(b) Upon the final disposition of every petition, the court shall enter a final order, and except where proceedings for delayed appeal are allowed, shall set forth in the order or a written memorandum of the case all grounds presented and shall state the findings of fact and conclusions of law with regard to each such ground.

(c) Where the petitioner has court-appointed counsel, the court may require petitioner's counsel to file a verified statement of dates and times he has consulted with petitioner and this statement shall become a part of the record.

(d) The court shall rule within sixty (60) days of conclusion of the proof. Such deadline shall not be extended by agreement, and such deadline may be extended only by order of the court based upon a finding that unforeseeable circumstances render a continuance a manifest necessity. Such extension shall not exceed thirty (30) days. Final disposition of a capital case must be made within one (1) year of the filing of the petition. Copies of all orders extending deadlines in capital cases shall be sent to the office of the administrator of the courts. The administrative office of the courts shall report annually to the general assembly on the compliance by the courts with the time limits established for capital cases and the reason for noncompliance, if any.

§ 40-30-112. Notice of final judgments by clerk of court.-- The clerk of the court shall send a copy of the final judgment to the petitioner, the petitioner's counsel of record, any authority imposing restraint on the petitioner and the attorney general and reporter at Nashville.

§ 40-30-113. Petitioner unconstitutionally denied appeal--
Procedure.--(a) When the trial judge conducting a hearing pursuant to this chapter finds that the petitioner was denied his right to an appeal from his original conviction in violation of the Constitution of the United States or the Constitution of Tennessee and that there is an adequate record of the original trial proceeding available for such review, the judge can:

(1) If a transcript was filed, grant a delayed appeal;

(2) If, in the original proceedings, a motion for a new trial was filed and overruled but no transcript was filed, authorize the filing of the transcript in the convicting court; or

(3) If no motion for a new trial was filed in the original proceeding, authorize such motion to be made before the original trial court within thirty (30) days. Such motion shall be disposed of by the original trial court as if the motion had been filed under authority of Rule 59 of the Rules of Civil Procedure.

(b) An order granting proceedings for a delayed appeal shall be deemed the final judgment for purposes of review. If either party does appeal, the time limits provided in this section shall be computed from the date the clerk of the trial court receives the order of the appellate court determining the appeal.

(c) The judge of the court which sentenced a prisoner who has sought and obtained relief from that sentence by any procedure in a federal court is likewise empowered to grant the relief provided in this section.

§ 40-30-114. Reimbursement of expenses of district attorney general--Duty of attorney general & reporter.--(a) The district attorney general shall be reimbursed for any expenses including travel incurred in connection with the preparation and trial of any proceeding under this chapter. This expense shall be paid by the state of Tennessee, and shall not be included in the expense allowance now received by the various district attorneys general.

(b) (1) It is the duty and function of the attorney general and reporter, and his staff, to lend whatever assistance may be necessary to the district attorney general in the trial and disposition of such cases.

(2) In the event an appeal is taken or a delayed appeal in the nature of a writ of error is granted, the attorney general and reporter, and his staff, shall represent the state and prepare and file all necessary briefs in the same manner as now performed in connection with criminal appeals.

§ 40-30-115. Determination of indigency--Appointment of counsel and court reporters.--Indigency shall be determined and counsel and court reporters appointed and reimbursed as now provided for criminal and habeas corpus cases by Chapter 14, Parts 2 and 3 of this title.

§ 40-30-116. Appeal after final judgment.--The order granting or denying relief under the provisions of this chapter shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure. In capital cases, the appellate court in which the case is pending shall render a decision within nine (9) months of the date of oral argument in the case, if oral argument is conducted. If no oral argument occurs, the court shall render an opinion within nine (9) months after submission of the case to the court for decision. The appellate court shall have thirty (30) days in which to dispose of any petition to rehear which may be filed. If an appellate court finds that it is unable to comply with such deadlines, it shall enter an order setting out the circumstances which render an extension beyond these time limits a necessity. Copies of all such orders shall be sent to the office of the administrator of the courts. The administrative office of the courts shall report annually to the general assembly on the compliance of the appellate courts with the time limits established in this section.

§ 40-30-117. Motions to reopen.--(a) A petitioner may file a motion in the trial court to reopen the first post-conviction petition only if the following applies:

(1) The claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional

right that was not recognized as existing at the time of trial; or

(2) The claim in the motion is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the motion seeks relief from a sentence that was enhanced because of a previous conviction and said conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid, and

(4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have his conviction set aside or his sentence reduced.

(b) The motion must set out the factual basis underlying its claims and must be supported by affidavit. The motion shall be denied unless the factual allegations, if true, meet the requirements of subsection (a) of this section. If the court grants the motion, the procedure, relief and appellate provisions of this chapter shall apply.

(c) If the motion is denied, the petitioner shall have ten (10) days to file an application in the court of criminal appeals seeking permission to appeal. The application shall be accompanied by all of the documents filed by both parties in the trial court and the order denying the motion. The state shall have ten (10) days to respond. The court of criminal appeals shall not grant the application unless it appears that the trial court abused its discretion in denying the motion. If it determines that the trial court did so abuse its discretion, the court of criminal appeals shall remand the matter to the trial court for further proceedings.

§ 40-30-118. Promulgation of rules.-- The supreme court may promulgate rules of practice and procedure consistent with this chapter, including rules prescribing the form and contents of the petition, the preparation and filing of the record and assignments of error for simple appeal and for delayed appeal in the nature of a writ of error and may make petition forms available for use by petitioners. The Supreme Court shall develop a form which shall be available without cost to a prisoner in the prison and other places of detention and shall also be available without cost to any potential petitioner in the office of the clerk of any court of record having criminal jurisdiction.

§ 40-30-119. Bail during new trial or delayed appeal--
Exception.-- When a new trial or delayed appeal is granted, release on bail shall be determined by the trial judge as provided by law pending further proceedings. In all other cases the petitioner shall not be entitled to bail.

§ 40-30-120. Stays of execution when petitioner is under sentence of death.--

(a) When affirming a conviction and sentence of death on direct appeal, the Tennessee Supreme Court shall contemporaneously set a date for an execution. Such date shall be no less than four (4) months from the date of the judgment of the

Tennessee Supreme Court. Upon the filing of a petition for post-conviction relief, the court in which the conviction occurred shall issue a stay of the execution date which shall continue in effect for the duration of any appeals or until the post-conviction action is otherwise final. The execution date shall not be stayed prior to the filing of a petition for post-conviction relief except upon a showing by the petitioner that he is unable to file a petition prior to the execution date and that such inability is justified by extraordinary circumstances beyond his control.

(b) Where the petitioner is under a sentence of death and the petition is not the first petition under this chapter attacking that judgment, or a motion to reopen has been filed, no court may stay the execution unless a court of competent jurisdiction first finds that a motion to reopen which meets the requirements set out in § 40-30-117 has been granted.

(c) The mere satisfaction of the requirements of subsection (b) shall not automatically result in a stay. In order to obtain a stay, an applicant must show that upon the court's consideration of the petition there is a significant possibility that the death sentence will be invalidated and that there is a significant possibility that the death sentence will be carried out before consideration of the petition is concluded.

(d) Any motion for stay pending consideration of the post-conviction petition must be presented first to the court where the petition is filed. The decision of the court shall be reviewable by the court of criminal appeals upon the filing of a motion for review. Either party may seek review. The lower court's determination shall not be set aside unless the movant demonstrates an abuse of discretion. The action of the court of criminal appeals shall likewise be reviewable upon the filing of a motion for review in the Tennessee Supreme Court. Either party may seek review. The determination of the court of criminal appeals shall not be set aside unless the movant demonstrates an abuse of discretion.

(e) Each motion for stay, or motion for review, shall be filed in writing with the clerk of the court to whom the motion is directed. The clerk shall immediately refer the matter to the court. Each motion shall be served upon opposing counsel in the most expeditious manner practicable. The motion shall recite that opposing counsel has been served and in what manner. Oral requests directed to a judge are prohibited unless, owing to emergency circumstances, the filing of a written motion is impractical. In such event, counsel initiating such contact shall orally notify opposing counsel prior to any such contact.

(f) Motions for review may be acted upon by a single judge of the appellate court. Such judge may, in lieu thereof, refer the motion to the court. In the court of criminal appeals, such reference will be to a three (3) judge panel of the court in the grand division where the motion is filed. Review shall be made promptly within five (5) days or within such shorter period as necessary to preclude the issue from becoming moot, whether by a single judge or by the court. Oral argument shall not be permitted unless the court otherwise directs. Opposing counsel shall have a right to file a written response to the motion within three (3) days of the service of the motion. If time does not permit the filing of a written response, the court shall ascertain the position of opposing counsel by other means which may include a telephone conference. The court may consider the last-minute nature of an application to stay execution by resolving against the petitioner any doubts and uncertainties as to the sufficiency of his submission.

40-30-121. Priority.-- Post-conviction cases where the petitioner is under the death sentence shall be given priority over all other matters in docketing by the courts having trial and appellate jurisdiction of the cases.

§ 40-30-122. Interpretation.-- For purposes of this chapter, a new rule of constitutional criminal law is announced if the result is not dictated by precedent existing at the time the petitioner's conviction became final and application of the rule was susceptible to debate among reasonable minds. A new rule of constitutional criminal law shall not be applied retroactively in a post-conviction proceeding unless the new rule places primary, private individual conduct beyond the power of the criminal law-making authority to proscribe or requires the observance of fairness safeguards that are implicit in the concept of ordered liberty.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it and shall govern all petitions for post-conviction relief filed after this date, and any motions which may be filed after this date to reopen petitions for post-conviction relief which were concluded prior to the effective date of this act. Notwithstanding any other provision of this act to the contrary, any person having a ground for relief recognized under this act shall have at least one (1) year from the effective date of this act to file a petition or a motion to reopen a petition under this act.

On motion, Amendment No. 2 was adopted.

Rep. Hargrove moved that **House Bill No. 1**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 91
Noes 3
Present and not voting 1

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Boyer, Bragg, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, S., Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Turner (Hamilton), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 91.

Representatives voting no were: Bowers, Jones, R. (Shelby), Turner (Shelby) -- 3.

Representatives present and not voting were: DeBerry, J. -- 1.

A motion to reconsider was tabled.

MESSAGE FROM THE SENATE
April 19, 1995

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 1477; passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

***Senate Bill No. 1477 -- Driver Licenses --** Makes permanent the provisions (TCA 5550-511 -- 514) for revoking driver licenses of minors who withdraw from secondary school. Amends Chapter 819 of the Public Acts of 1990. by *Womack.

REGULAR CALENDAR, CONTINUED

House Bill No. 1086 -- Cemeteries -- Purports to amend annual report requirements of cemetery companies and audit requirements; however, makes no substantive change in the law. Amends TCA 46-2-202, 205. by *Byrd (*SB1304 by Ford).

Rep. Byrd moved that House Bill No. 1086 be reset to the Calendar for Monday, April 24, 1995, which motion prevailed.

House Bill No. 1136 -- Pharmacy -- Requires containers of prescription drugs to state generic name of the drug actually dispensed as well as brand name of drug for which substitution made. Amends TCA Title 53, Chapter 10, Part 2 and Title 63, Chapter 10, Part 2. by *Hassell (*SB1483 by *Person).

Rep. Hassell moved that House Bill No. 1136 be passed on third and final consideration.

Rep. Byrd moved adoption of Health and Human Resources Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1136 by deleting from the amendatory language of Section 1 the words "shall ensure that the label" and by substituting instead the following:
is hereby encouraged to ensure that the label

AND FURTHER AMEND by deleting from the amendatory language of Section 1 the words "the requirements of" .

AND FURTHER AMEND by adding the following language to the end of the amendatory language of Section 1:

As used in this subsection, the term "pharmacist" does not include a pharmacist who is dispensing a prescription for administration to an inpatient of a healthcare institution.

AND FURTHER AMEND by deleting Section 2 and by substituting instead the following:

SECTION 2. No later than January 12, 1996, the state board of pharmacy shall report to the general assembly the board's best estimate of the percentage of pharmacists electing to comply with the provisions of Section 1. Such estimate shall be based upon the recorded observations and findings of board investigators engaged in the regular, cyclical inspection of pharmacies within the state. Such report shall also include a description of past and future board activities undertaken or planned to encourage voluntary compliance with the provisions of Section 1.

AND FURTHER AMEND by deleting Section 3 and by substituting instead the following:

SECTION 3. This act shall take effect on becoming a law, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Rep. Hassell moved that **House Bill No. 1136**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	96
Noes	0

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable,

Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

House Bill No. 1659 -- Motor Vehicles, Titling and Registration -- Expands cultural motor vehicle registration plate promotional campaign to require inclusion of illustration and explanation of each plate in license renewal applications. Amends TCA Title 55, Chapter 4, Part 3. by *Duer, *Head, *Patton, *Eckles, *Burchett, *Hassell, *Odom (*SBL679 by *Cohen).

On motion, House Bill No. 1659 was made to conform with **Senate Bill No. 1679**; the Senate Bill was substituted for the House Bill.

Rep. Duer moved that Senate Bill No. 1679 be passed on third and final consideration.

On motion, Rep. Robinson withdrew Transportation Committee Amendment No. 1.

On motion, Rep. Robinson withdrew Transportation Committee Amendment No. 2.

Rep. McKee moved adoption of Amendment No. 3, which was immediately withdrawn.

Rep. Givens moved the previous question, which motion prevailed.

Rep. Duer moved that **Senate Bill No. 1679** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	95
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 95.

Representatives present and not voting were: Dunn -- 1.

A motion to reconsider was tabled.

House Bill No. 972 -- Wine, Wineries -- Increases from 20,000 to 40,000 gallons annual limit of wine that Tennessee wineries may sell at their production premises at retail sale. Amends TCA Title

57, Chapter 3, Part 2. by *Duer, *Cole (Dyer), *Phelan, *Fowlkes, *Robinson, *Brown, *Newton, *Hicks, *Stamps, *Buck, *Huskey, *Davis, *Head, *Gunnels, *West (*SB218 by *O'Brien, *Henry, *Rice).

On motion, House Bill No. 972 was made to conform with **Senate Bill No. 218**; the Senate Bill was substituted for the House Bill.

Rep. Duer moved that Senate Bill No. 218 be passed on third and final consideration.

On motion, Rep. Jones R (Shelby) withdrew State and Local Government Committee Amendment No. 1.

Rep. Duer moved that **Senate Bill No. 218** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	69
Noes	18
Present and not voting	2

Representatives voting aye were: Armstrong, Bell, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis, DeBerry, L., Duer, Eckles, Fitzhugh, Fowlkes, Garrett, Gunnels, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McKee, McMillan, Miller, Newton, Odom, Peach, Phelan, Pruitt, Purcell, Ridgeway, Sharp, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, West, Westmoreland, Whitson, Williams (Williamson), Windle, Winningham, Mr. Speaker Naifeh -- 69.

Representatives voting no were: Beavers, Burchett, Byrd, Cross, Dunn, Ford, Haley, McAfee, McDaniel, Pinion, Rhinehart, Rinks, Ritchie, Roach, Walley, White, Williams (Union), Wood -- 18.

Representatives present and not voting were: Ramsey, Shirley -- 2.

A motion to reconsider was tabled.

House Bill No. 1481 -- Driver Licenses -- Makes permanent the provisions (TCA 5550-511 -- 514) for revoking driver licenses of minors who withdraw from secondary school. Amends Chapter 819 of the Public Acts of 1990. by *Winningham (*SB1477 by *Womack).

On motion, House Bill No. 1481 was made to conform with **Senate Bill No. 1477**; the Senate Bill was substituted for the House Bill.

Rep. Winningham moved that **Senate Bill No. 1477** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	92
Noes	1
Present and not voting	2

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, U. (Shelby), Joyce, Kent, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 92.

Representatives voting no were: Pruitt -- 1.

Representatives present and not voting were: Jones, S., Kernell -
- 2.

A motion to reconsider was tabled.

MESSAGE CALENDAR

HOUSE ACTION ON SENATE AMENDMENT

***House Bill No. 693** -- Gas, Petroleum Products, Volatile Oils -
- Revises Liquefied Petroleum Safety Act. Amends TCA Title 68,
Chapter 135. by *Head (SB1115 by *Cooper).

Senate Amendment No. 1

AMEND House Bill No. 693 by deleting Section 1.

AND FURTHER AMEND by deleting from Section 9 the language
" one hundred dollars (\$100) and substituting instead the language
" seventy dollars (\$70) " .

AND FURTHER AMEND by deleting from Section 10 the language
" one hundred dollars (\$100) and substituting instead the language
" seventy dollars (\$70) " .

AND FURTHER AMEND by adding before the effective date
section the following new section and by renumbering the effective
date section accordingly:

SECTION___. Tennessee Code Annotated, Section 68-135-
104(4), is amended by deleting subdivision (B) and
substituting instead the following:

(B) Must pay biennially a permit fee in the sum
of three hundred dollars (\$300).

Rep. Head moved that the House concur in Senate Amendment(s)
No(s). 1 to **House Bill No. 693**, which motion prevailed by the
following vote:

Ayes 92
Noes 2

Representatives voting aye were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Cole (Carter), Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hargrove, Hassell, Head, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 92.

Representatives voting no were: Coffey, Herron -- 2.

A motion to reconsider was tabled.

HOUSE ACTION ON SENATE MESSAGE

Senate Bill No. 1719 -- Board of Regents -- Adds faculty member to board of regents for three year term; rotates appointments among board of regents institutions. Amends TCA Title 49, Chapter 8, Part 2. by *Cohen, *Dixon, *Crowe (*HB363 by *Pinion, *Herron).

Rep. Pinion moved that Senate Bill No. 1719 be reset to the Message Calendar for Wednesday, April 26, 1995, which motion prevailed.

UNFINISHED BUSINESS

NOTICE TO ACT ON SENATE MESSAGES

Pursuant to the suspension of **Rule No. 59**, notice was given that the following measure(s) from the Senate would be considered on April 20, 1995:

House Bill No. 17: Rep. Phelan.

NOTICE TO ACT ON SENATE MESSAGES

Pursuant to the suspension of **Rule No. 59**, notice was given that the following measure(s) from the Senate would be considered on April 24, 1995:

House Bill No. 971: Rep. Duer.

SPONSORS ADDED

Under **Rule No. 43**, the following members were permitted to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Joint Resolution No. 202: Rep(s). Davis and Whitson as prime sponsor(s).

House Bill No. 343: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 385: Rep(s). Givens as prime sponsor(s).
 House Bill No. 394: Rep(s). Herron as prime sponsor(s).
 House Bill No. 561: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 594: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 608: Rep(s). Walley as prime sponsor(s).
 House Bill No. 624: Rep(s). Walley as prime sponsor(s).
 House Bill No. 674: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 735: Rep(s). Walley, McDonald, Ridgeway, Lewis,
 Pinion and Haley as prime sponsor(s).
 House Bill No. 942: Rep(s). Walley as prime sponsor(s).
 House Bill No. 1053: Rep(s). Venable as prime sponsor(s).
 House Bill No. 1150: Rep(s). Cantrell as prime sponsor(s).
 House Bill No. 1228: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 1367: Rep(s). West as prime sponsor(s).
 House Bill No. 1504: Rep(s). Venable as prime sponsor(s).
 House Bill No. 1585: Rep(s). Rinks as prime sponsor(s).
 House Bill No. 1609: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 1637: Rep(s). Brooks as prime sponsor(s).
 House Bill No. 1758: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1759: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1760: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1761: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1762: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1763: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1764: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1765: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1766: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1767: Rep(s). Dunn as prime sponsor(s).
 House Bill No. 1768: Rep(s). Dunn as prime sponsor(s).

House Bill No. 1769: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1770: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1771: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1772: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1773: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1774: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1775: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1776: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1777: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1778: Rep(s). Dunn as prime sponsor(s).
House Bill No. 1779: Rep(s). Halteman Harwell as prime sponsor(s).

REQUEST TO BE ADDED AS SPONSOR

The following member(s) requested to add their name(s) as sponsor(s) as indicated below, the prime sponsor having agreed to such addition. Sponsorship could not be granted since the request was made after passage/adoption of said bill/resolution:

House Bill No. 886: Rep(s). Rhinehart.

**REPORT OF CHIEF ENGROSSING CLERK
April 19, 1995**

The following bill(s) was/were transmitted to the Governor for his action: House Bill(s) No(s). 383, 492, 667, 679, 1030, 1494, 1846, 1866, 1870 and 1871; also, House Joint Resolution(s) No(s). 5, 203, 205, 207, 208 and 209.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

**SIGNED
April 19, 1995**

The Speaker signed the following: Senate Bill(s) No(s). 50, 911, 954, 1233, 1493 and 1689; also, Senate Joint Resolution(s) No(s). 155 and 157.

**MESSAGE FROM THE GOVERNOR
April 19, 1995**

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 299, with his approval.
HARDY MAYS, Counsel to the Governor.

**MESSAGE FROM THE SENATE
April 19, 1995**

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 38, 684, 938, 1340 and 1355; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE

April 19, 1995

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 240, 794, 1135, 1499 and 1623; all passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

***Senate Bill No. 240** -- Courts, Juvenile -- Authorizes juvenile court to join child's parent or guardian as respondent to juvenile court action and issue summons requiring parent or guardian to appear. Amends TCA Title 37. by *Dixon.

***Senate Bill No. 794** -- Attorneys at Law -- Redefines "legal practice" to include solicitation; permits victims of unauthorized legal practice to sue for actual damages or treble legal fees paid and attorneys fees. Amends TCA Title 23, Chapter 3. by *Haynes.

***Senate Bill No. 1135** -- Evidence -- Makes internal environmental audit reports prepared by owner privileged and immune from discovery. by *Rochelle, *Haun, *Gilbert, *McNally, *Rice, *Wallace, *Miller J.

***Senate Bill No. 1499** -- Courts, General Sessions -- Establishes person to serve and methods and procedures by which process is to be served in general sessions courts. Amends TCA Title 16. by *Haynes.

***Senate Bill No. 1623** -- Private Protective Services -- Exempts full time law enforcement officer from training requirements to get registration upon submission of police officer standards and training commission certification. Amends TCA Title 62, Chapter 35. by *Kyle.

ENGROSSED BILLS

April 19, 1995

The following bills have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 1, 111, 1136, 1179, 1336 and 1643; also, House Joint Resolution(s) No(s). 230, 232, 233, 236 and 239.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ROLL CALL

The roll call was taken with the following results:

Present 98

Representatives present were: Armstrong, Arriola, Beavers, Bell, Bird, Bittle, Bowers, Boyer, Bragg, Brooks, Brown, Buck, Burchett, Byrd, Callicott, Cantrell, Chumney, Clabough, Coffey, Cole (Carter),

Cole (Dyer), Cross, Curtiss, Davidson, Davis, DeBerry, J., DeBerry, L., Duer, Dunn, Eckles, Fitzhugh, Ford, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Head, Herron, Hicks, Huskey, Jackson, Jones, R. (Shelby), Jones, S., Jones, U. (Shelby), Joyce, Kent, Kernell, Kerr, Kisber, Langster, Lewis, McAfee, McDaniel, McDonald, McKee, McMillan, Miller, Napier, Newton, Odom, Patton, Peach, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rinks, Ritchie, Roach, Robinson, Sharp, Shirley, Stamps, Stulce, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, White, Whitson, Williams (Union), Williams (Williamson), Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

RECESS MOTION

On motion of Rep. Purcell, the House recessed until 9:00 a.m., Thursday, April 20, 1995.